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HOUSE BILL NO. 1188

Offered January 10, 2018

Prefiled January 10, 2018

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 62.1-44.34:40, relating to discharges from natural gas pipelines; penalty.*

Patrons—Hurst, Rasoul, Gooditis, Lopez and Rodman; Senators: Deeds and Edwards

Referred to Committee on Rules

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 62.1-44.34:40, as follows:

*Article 13.**Discharges from Natural Gas Pipelines.***§ 62.1-44.34:29. Definitions.**

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

"Containment and cleanup" or "contain and clean up" means the abatement of any leak or release of gas; the removal, containment, cleanup, and disposal of gas; the extinguishment of any related fire; and, to the extent possible, the restoration of the environment to its existing state prior to a gas discharge.

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

"Gas" means natural gas, flammable gas, or toxic or corrosive gas.

"Operator" means any person who owns, operates, rents, or otherwise exercises control over or responsibility for a pipeline.

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

"Pipeline" means all new and existing pipe, all rights-of-way, and any equipment, facility, or building used in the transportation of natural gas, including line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, compressing, metering, and delivery stations and fabricated assemblies therein, and breakout tanks. The term does not include any pipeline whose mainline transmission pipe measures less than 50 miles in length within the Commonwealth and 24 inches in diameter.

§ 62.1-44.34:30. Applicability of Administrative Process Act.

The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and the proceedings of the Board under this article.

§ 62.1-44.34:31. Baseline water testing.

No operator shall cause or permit the operation of a pipeline in the Commonwealth until an independent water quality test for the ground water supply for each property wholly or partially located within the right-of-way of the pipeline has been conducted and the results have been filed with and approved by the Board.

§ 62.1-44.34:32. Gas discharge contingency plans.

A. No operator shall cause or permit the operation of a pipeline in the Commonwealth unless a gas discharge contingency plan applicable to the pipeline has been filed with and approved by the Board.

B. Application for approval of a gas 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. A gas discharge contingency plan shall 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; protect water supplies; protect property; respond to the threat of a gas discharge; contain, clean up, and mitigate a gas discharge; and extinguish any resulting fire, 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 transported by any pipeline 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 36 months. The Board, on a finding of need, may require a gas discharge exercise designed to demonstrate the pipeline's ability to implement its gas 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

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59 approval of a gas discharge contingency plan if it determines that:

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

62 2. The pipeline's discharge experience or its inability to implement its plan in a gas discharge
63 exercise demonstrates a necessity for modification; or

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

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

67 1. Approval was obtained by fraud or misrepresentation;

68 2. The plan cannot be implemented as approved; or

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

70 **§ 62.1-44.34:33. Regulations for natural gas pipelines.**

71 A. The Board shall adopt regulations and develop procedures necessary to prevent pollution of
72 lands, storm drain systems, or state waters from the discharge of gas from pipelines. These regulations
73 shall be developed in substantial conformity with the current codes and standards recommended by the
74 National Fire Protection Association. To the extent that they are consistent with the Board's program,
75 the Board shall incorporate accepted industry practices when developing the regulations contemplated
76 by this section. The regulations shall provide the following:

77 1. To prevent leaks from pipelines, requirements for metering, inventory control, testing for
78 significant inventory variations (e.g., test procedures in accordance with accepted industry practices,
79 where feasible, and approved by the Board), pressure testing, and formal pipe inspections every five
80 years in accordance with accepted industry practices and procedures approved by the Board. Initial
81 testing shall be on a schedule approved by the Board;

82 2. To prevent leaks from pipelines, requirements (i) for a visual inspection of the pipeline each day
83 of normal operations and a weekly inspection of the pipeline with a checklist approved by the Board,
84 performed by a person certified or trained by the operator in accordance with Board requirements; (ii)
85 for monthly gauging and inspection of all air monitors, optical detectors, and ground water monitoring
86 wells located at the pipeline and monitoring of the well head space in ground water monitoring wells
87 for the presence of gas or vapors indicating the presence of gas; and (iii) for quarterly sampling and
88 laboratory analysis of the chemicals present in each such ground water monitoring well to determine the
89 presence of gas or gas by-product contamination;

90 3. To prevent damage to ground water supplies, the annual commissioning of an independent test of
91 the ground water supply for each property located wholly or partially within the right-of-way of the
92 pipeline, the comparison of the results of such tests with the results of the baseline testing required by
93 § 62.1-44.34:31, and the filing of all such annual results and comparisons with the Board; and

94 4. To ensure proper training of individuals conducting inspections, requirements for proper
95 certification or training by operators relative to pipelines.

96 B. The Board shall establish performance standards for pipelines installed, retrofitted, or brought
97 into use after the effective date of the regulations adopted pursuant to this section that incorporate all
98 technologies designed to prevent gas discharges that have been proven in accordance with accepted
99 industry practices and shown to be cost-effective.

100 C. The Board shall establish criteria for granting variances from the requirements of the regulations
101 adopted pursuant to this section on a case-by-case basis, except that the Board shall not grant a
102 variance that would result in an unreasonable risk to the public health or the environment. Variances by
103 regulation shall be based on relevant factors such as pipeline size, use, and location. Within 30 days
104 after the grant of a variance for a pipeline, the Board shall send written notification of the variance to
105 the chief administrative officer of each locality in which the pipeline is located.

106 D. The regulations adopted by the Board pursuant to this section shall not address matters that are
107 addressed by the interstate pipeline safety program conducted pursuant to the federal Natural Gas
108 Pipeline Safety Act of 1968, P.L. 90-481, as amended, without regard to whether the State Corporation
109 Commission has entered into an interstate agent agreement with the U.S. Secretary of Transportation
110 under § 56-555.2 that authorizes the State Corporation Commission to implement the federal Natural
111 Gas Pipeline Safety Act of 1968.

112 **§ 62.1-44.34:34. Financial responsibility for pipelines.**

113 A. The Board is authorized to adopt regulations requiring each operator of a pipeline to demonstrate
114 financial responsibility sufficient to comply with the requirements of this article as a condition of
115 operation. The operator of a pipeline shall demonstrate financial responsibility based on the total
116 transmission capacity of the pipeline within the Commonwealth. Regulations governing the amount of
117 any financial responsibility required shall take into consideration the type, gas transmission capacity,
118 and location of a pipeline, the risk of a discharge of gas from the pipeline, the potential damage or
119 injury to state waters or the impairment of their beneficial use that may result from a discharge from
120 the pipeline, the potential cost of containment and cleanup from the pipeline, and the nature and degree

of injury or interference with property and general health and welfare that may result from a discharge from the pipeline. In no instance shall the financial responsibility requirements for a pipeline exceed \$5 million for a pipeline. No governmental agency shall be required to comply with any such regulations.

B. 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. In no instance shall any financial test of self-insurance require the operator of a pipeline to demonstrate more than \$1 of net worth for each dollar of required financial responsibility.

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

D. 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.

E. It is not a defense to any action brought for failure to comply with the requirement to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the pipeline or the operator of the pipeline possessed evidence of financial responsibility accepted by the Board.

§ 62.1-44.34:35. Discharge of gas prohibited; liability for permitting discharge.

A. The discharge of gas into or upon lands, storm drain systems, or state waters within the Commonwealth is prohibited. For purposes of this section, a discharge of gas includes a discharge of gas that violates any applicable federal or state law or regulation, water quality standard, or permit or certificate of the Board.

B. Any person (i) discharging or causing or permitting a discharge of gas into or upon lands, storm drain systems, or state waters, (ii) discharging or causing or permitting a discharge of gas that may reasonably be expected to enter lands, storm drain systems, or state waters, or (iii) causing or permitting a substantial threat of such discharge, and any operator of any pipeline from which there is (a) a discharge of gas into or upon lands, storm drain systems, or state waters, (b) a discharge of gas that may reasonably be expected to enter lands, storm drain systems, or state waters, or (c) a substantial threat of such discharge, shall, immediately upon learning of such discharge or threat of discharge, implement any applicable gas discharge contingency plan approved under this article or take such other action as may be deemed necessary in the judgment of the Board to contain and clean up such discharge or threat of such discharge. In the event of such discharge or threat of discharge, if it cannot be determined immediately who is the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons.

C. Any person (i) discharging or causing or permitting a discharge of gas into or upon lands, storm drain systems, or state waters within the Commonwealth, (ii) discharging or causing or permitting a discharge of gas that may reasonably be expected to enter lands, storm drain systems, or state waters, or (iii) causing or permitting a substantial threat of such discharge, and any operator of any pipeline from which there is (a) a discharge of gas into or upon lands, storm drain systems, or state waters within the Commonwealth, (b) a discharge of gas that may reasonably be expected to enter lands, storm drain systems, or state waters, or (c) a substantial threat of such discharge, shall be liable to:

1. The Commonwealth or any political subdivision thereof for all costs and expenses of investigation, firefighting, and containment and cleanup incurred as a result of such discharge or threat of discharge, including reasonable personnel, administrative, and equipment costs and expenses directly incurred by the Commonwealth or the political subdivision, in and for preventing or alleviating damage, loss, hardship, or harm to human health, the environment, or property caused or threatened to be caused by such discharge or threat of discharge;

2. The Commonwealth or any political subdivision thereof for all damages to property of the Commonwealth or the political subdivision caused by such discharge;

3. The Commonwealth or any political subdivision thereof for loss of tax or other revenues caused by such discharge and compensation for the loss of any natural resources that cannot be restocked, replenished, or restored; and

4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural, or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of gas prohibited by this article or a threat of such discharge shall be liable

under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages or costs and expenses of containment and cleanup under this section that are caused by the acts or omissions of such person in rendering such assistance; however, such liability provision shall not apply to a person discharging or causing or permitting a discharge of gas into or upon lands, storm drain systems, or state waters, discharging or causing or permitting a discharge of gas that may reasonably be expected to enter lands, storm drain systems, or state waters, or causing or permitting a substantial threat of such discharge, or to such person's employee or agent. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the federal Clean Water Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of gas or threat of such discharge. In addition, a person, other than an operator, who voluntarily, without compensation, and upon the request of a governmental agency, assists in the containment and cleanup of a discharge of gas shall not be liable for any civil damages resulting from any act or omission on his part in the course of his rendering such assistance in good faith; nor shall any person or any organization exempt from income taxation under § 501(c)(3) of the Internal Revenue Code who notifies or assists in notifying the membership of such organization to assist in the containment and cleanup of a discharge of gas, voluntarily, without compensation, and upon the request of a government agency, be liable for any civil damages resulting from such notification rendered in good faith.

E. In any action brought under this article, it shall not be necessary for the Commonwealth, a political subdivision, or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, a political subdivision, or any person, if a prevailing party, shall be entitled to an award of reasonable attorney fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, 3, or 4 that the discharge was caused solely by (i) an act of God; (ii) an act of war; (iii) a willful act or omission of a third party who is not an employee, agent, or contractor of the operator; or (iv) any combination of the foregoing; however, this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:36 or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B.

H. In any action brought under subdivision C 2, 3, or 4, the total liability of a person or operator under this section for each discharge of gas or threat of such discharge shall not exceed the amount of financial responsibility required under § 62.1-44.34:34 or \$10 million, whichever is greater; however, there shall be no limit of liability imposed under this section (i) if the discharge of gas or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting the discharge or threat of discharge or by an agent, employee, or contractor of such person or operator, or by the violation of any applicable safety, construction, or operation regulations by such person or operator or an agent, employee, or contractor of such person or operator, or (ii) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:36 or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B.

I. An operator that incurs costs pursuant to subsection B shall have the right to recover all or part of such costs in an action for contribution against any person or persons whose acts or omissions caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs among the parties using such equitable factors as the court deems appropriate.

J. Any person or operator who pays costs or damages pursuant to subsection C shall have the right to recover all or part of such costs or damages in an action for contribution against any person whose act or omission has caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs or damages among the parties using such equitable factors as the court deems appropriate.

§ 62.1-44.34:36. Reporting of discharge.

A. Any person discharging or causing or permitting a discharge of gas into or upon lands, storm drain systems, or state waters within the Commonwealth or discharging or causing or permitting a discharge of gas that may reasonably be expected to enter lands, storm drain systems, or state waters within the Commonwealth, and any operator of any pipeline from which there is a discharge of gas into or upon lands, storm drain systems, or state waters, or from which there is a discharge of gas that may reasonably be expected to enter lands, storm drain systems, or state waters, shall, immediately upon learning of the discharge, notify (i) the Board, (ii) the director of emergency management appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs and for any other

political subdivision reasonably expected to be affected by the discharge, and (iii) appropriate federal authorities, of such discharge. Notice will be deemed to have been given under this section for any discharge of gas to state lands in amounts less than 25 standard cubic feet if the recordkeeping requirements of subsection B of § 62.1-44.34:37 have been met and the gas leak or release has been abated and the gas has been cleaned up in accordance with the requirements of this article.

B. Observations and data gathered as a result of the monthly and quarterly inspection activities required by § 62.1-44.34:33 shall be maintained at a location approved by the Board pursuant to § 62.1-44.34:37 and compiled into a summary, on a form developed by the Board, such summary to be submitted to the Board annually on a schedule established by the Board. Should any such observations or data indicate the presence of natural gas hydrocarbons in the air or in ground water, the results shall be reported immediately to the Board, the Department of Health, the Department of Emergency Management, and the local director of emergency management appointed pursuant to § 44-146.19.

§ 62.1-44.34:37. Recordkeeping and access to records and facilities.

A. All records relating to compliance with the requirements of this article, and all records relating to compliance with the requirements of the federal Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 60101 et seq.), shall be maintained by the operator of a pipeline at a location approved by the Board for a period of at least five years. Such records shall be available for inspection and copying by the Board and shall include books, papers, documents, databases, files, photographs, films, and records relating to the daily measurement, metering, and inventory of gas stored at or transmitted by a pipeline; all information relating to pipeline testing; all records relating to leak events or other discharges of gas from the pipeline; all supporting documentation for developed contingency plans; and any records required to be kept by regulations of the Board.

B. A record of all discharges of gas to state lands in amounts less than 25 standard cubic feet shall be established and maintained for a period of five years in accordance with subsection A.

C. Every operator of a pipeline shall, upon reasonable notice, permit at reasonable times and under reasonable circumstances a duly designated official of the political subdivision in which the pipeline is located or of any political subdivision within one mile of the pipeline or a duly designated agent retained or employed by such political subdivision to have access to and to copy all information required to be kept in subsections A and B.

D. Any duly designated official of the political subdivision in which the pipeline is located or of any political subdivision within one mile of the pipeline or a duly designated agent retained or employed by such political subdivision may, at reasonable times and under reasonable circumstances, inspect any pipeline or enter and inspect any building, station, or facility, provided that in nonemergency situations such local official, agent, or employee shall be accompanied by the operator or his designee.

§ 62.1-44.34:38. Enforcement and penalties.

A. Upon a finding of a violation of this article, a regulation, or a term or condition of approval issued pursuant to this article, the Board is authorized to issue a special order requiring any person to cease and desist from causing or permitting such violation or requiring any person to comply with any such provision, regulation, or term or condition of approval. Such special orders shall be issued only after notice and an opportunity for hearing except that, if the Board finds that any discharge in violation of this article poses a serious threat to (i) the public health, safety, or welfare or the health of animals, fish, or botanic or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural, or other reasonable uses, the Board may issue, without advance notice or hearing, an emergency special order requiring the operator of any pipeline to cease such discharge immediately, to implement any applicable contingency plan, and to effect containment and cleanup. Such emergency special order may also require the operator of a pipeline to modify or cease regular operation of the pipeline, or any portion thereof, until the Board determines that continuing regular operation of the pipeline, or such portion thereof, will not pose a substantial threat of additional or continued discharges. The Board shall affirm, modify, amend, or cancel any such emergency order after providing notice and opportunity for hearing to the operator charged with the violation. The notice of the hearing and the emergency order shall be issued at the same time. If an operator who has been issued such a special order or an emergency special order is not complying with the terms thereof, the Board may proceed in accordance with subsection B, and where the order is based on a finding of an imminent and substantial danger, the court shall issue an injunction compelling compliance with the emergency special order pending a hearing by the Board. If an emergency special order requires modification or cessation of operations, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

B. In the event of a violation of this article or a regulation, administrative or judicial order, or term or condition of approval issued under this article, or in the event of a failure to comply with a special order issued by the Board pursuant to this section, the Board is authorized to proceed by civil action to obtain an injunction of such violation, to obtain such affirmative equitable relief as is appropriate, and

305 to recover all costs, damages, and civil penalties resulting from such violation or failure to comply. The
306 Board shall be entitled to an award of reasonable attorney fees and costs in any action in which it is a
307 prevailing party.

308 C. Any person who violates or causes or permits to be violated a provision of this article, or a
309 regulation, administrative or judicial order, or term or condition of approval issued under this article,
310 shall be subject to a civil penalty for each such violation as follows:

311 1. For failing to obtain approval of a gas discharge contingency plan as required by
312 § 62.1-44.34:32, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$5,000 per
313 day for each day of violation thereafter;

314 2. For failing to maintain evidence of financial responsibility as required by § 62.1-44.34:34, not less
315 than \$1,000 nor more than \$100,000 for the initial violation, and \$5,000 per day for each day of
316 violation thereafter;

317 3. For discharging or causing or permitting a discharge of gas into or upon state waters, or owning
318 or operating any pipeline from which such discharge originates in violation of § 62.1-44.34:35, up to
319 \$100 per standard cubic foot of gas discharged;

320 4. For failing to cooperate in containment and cleanup of a discharge as required by
321 § 62.1-44.34:35 or for failing to report a discharge as required by § 62.1-44.34:36, not less than \$1,000
322 nor more than \$50,000 for the initial violation, and \$10,000 for each day of violation thereafter; and

323 5. For violating or causing or permitting to be violated any other provision of this article, or a
324 regulation, administrative or judicial order, or term or condition of approval issued under this article,
325 up to \$32,500 for each violation. Each day of violation of each requirement shall constitute a separate
326 offense.

327 D. Civil penalties may be assessed under this article either by a court in an action brought by the
328 Board pursuant to this section, as specified in § 62.1-44.15, or with the consent of the person charged,
329 in a special order issued by the Board. All penalties shall be paid into the state treasury and deposited
330 by the State Treasurer into the Virginia Environmental Emergency Response Fund as established in
331 § 10.1-2500. In determining the amount of any penalty, consideration shall be given to the willfulness of
332 the violation, any history of noncompliance, the actions of the person in reporting, containing, and
333 cleaning up any discharge or threat of discharge, the damage or injury to state waters or the
334 impairment of their beneficial use, the cost of containment and cleanup, the damage to ground water
335 supplies, the damage to property, the nature and degree of injury to or interference with property and
336 general health and welfare, and the available technology for preventing, containing, reducing, or
337 eliminating the discharge.

338 E. Any person who knowingly violates, or causes or permits to be violated, a provision of this article
339 or a regulation, administrative or judicial order, or term or condition of approval issued under this
340 article is guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a
341 fine of not more than \$100,000, either or both. Any person who knowingly or willfully makes any false
342 statement, representation, or certification in any application, record, report, plan, or other document
343 filed or required to be maintained by this article or by an administrative or judicial order issued under
344 this article is guilty of a felony punishable by a term of imprisonment of not less than one nor more
345 than three years and a fine of not more than \$100,000, either or both. In the case of a discharge of gas
346 into or upon state waters:

347 1. Any person who negligently discharges or negligently causes or permits such discharge is guilty of
348 a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not more
349 than \$50,000, either or both.

350 2. Any person who knowingly and willfully discharges or knowingly and willfully causes or permits
351 such discharge is guilty of a felony punishable by a term of imprisonment of not less than one year nor
352 more than 10 years and a fine of not more than \$100,000, either or both.

353 F. Each day of violation of any requirement shall constitute a separate offense. In the event that the
354 violation of this article follows a prior felony conviction under subdivision E 2, such violation shall
355 constitute a felony and shall be punishable by a term of imprisonment of not less than two years nor
356 more than 10 years and a fine of not more than \$200,000, either or both.

357 G. Upon conviction for a violation of any provision of this article or a regulation, administrative or
358 judicial order, or term or condition of approval issued under this article, a defendant that is not an
359 individual shall be sentenced to pay a fine not exceeding the greater of:

360 1. \$1 million; or

361 2. An amount that is three times the economic benefit, if any, realized by the defendant as a result of
362 the offense.

363 **§ 62.1-44.34:39. Administrative fees.**

364 A. The Board is authorized to collect from any (i) applicant for acceptance of baseline water tests,
365 (ii) applicant for approval of a gas discharge contingency plan, or (iii) operator seeking acceptance of
366 evidence of financial responsibility, fees sufficient to meet, but not exceed, the costs of the Board related

to implementation of (a) § 62.1-44.34:31 as to an applicant for acceptance of baseline water tests, (b) § 62.1-44.34:32 as to an applicant for approval of a gas discharge contingency plan, and (c) § 62.1-44.34:34 as to an operator seeking acceptance of evidence of financial responsibility. The Board shall establish by regulation a schedule of fees that takes into account the nature and type of pipeline and the effect of any prior professional certification or federal review or approval on the level of review required by the Board. All such fees received by the Board shall be used exclusively to implement the provisions of this article.

B. Fees charged an applicant should reflect the average time and complexity of processing approvals in each of the various categories.

C. When adopting regulations for fees, the Board shall take into account the fees charged in neighboring states, and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage. Within six months of receipt of any federal moneys that would offset the costs of implementing this article, the Board shall review the amount of fees set by regulation to determine the amount of fees that should be refunded. Such refunds shall only be required if the fees plus the federal moneys received for the implementation of the program under this article as it applies to facilities exceed the actual cost to the Board of administering the program.

D. On October 1, 2019, and every two years thereafter, the Board shall make an evaluation of the implementation of the fee programs and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources and the Senate Committee on Finance and the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Finance.

§ 62.1-44.34:40. Exceptions.

Nothing in this article shall apply to: (i) a discharge authorized by a valid permit issued by the Board pursuant to subdivision (5) of § 62.1-44.15 or by the U.S. Environmental Protection Agency; (ii) an underground storage tank regulated under a state program; (iii) a discharge of hydrostatic test media from a pipeline undergoing a hydrostatic test in accordance with federal pipeline safety regulations; or (iv) a discharge authorized by the federal on-scene coordinator and the Executive Director or his designee in connection with activities related to the containment and cleanup of discharged gas, where such activities are undertaken to minimize overall environmental damage due to a gas leak into or on state waters. However, the exception provided in clause (iv) shall in no way reduce the liability of the person who initially discharged the gas that is being contained and cleaned up.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 836 of the Acts of Assembly of 2017 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.