

20107676D

## SENATE BILL NO. 626

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources  
on February 4, 2020)

(Patron Prior to Substitute—Senator Surovell)

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 62.1-44.34:39, relating to aboveground storage tanks; Hazardous Substance Aboveground Storage Tank Fund; civil and criminal penalties.

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 62.1-44.34:39, as follows:

Article 13.

Hazardous Substance Aboveground Storage Tanks.

§ 62.1-44.34:29. Definitions.

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

"Aboveground storage tank" means a tank or a series of interconnected tanks and its associated pipes (i) that has a total storage capacity of more than 5,000 gallons, excluding its associated pipes; (ii) that is used for storing a liquid hazardous substance at standard temperature and pressure outdoors; (iii) is manufactured to contain an accumulation of a liquid hazardous substance for six months or more and is constructed of nonearthen materials that provide structural support, such as concrete, steel, or plastic; and (iv) the volume of which, including the volume of the pipes, is more than 90 percent above the surface of the ground or the floor of an underground area. "Aboveground storage tank" does not include (a) a tank used to contain oil; (b) a line pipe and breakout tank of an interstate pipeline regulated under the federal Hazardous Liquid Pipeline Safety Act of 1979 or the federal Natural Gas Pipeline Safety Act of 1968, as amended; (c) a liquid trap, atmospheric or pressure vessel, or associated gathering lines related to oil or gas production and gathering operations; (d) a shipping container or other mobile tank that is subject to state or federal laws or regulations governing the transportation of hazardous materials, including a railroad freight car that is subject to federal regulation; (e) a barge or boat subject to federal regulation under the U.S. Coast Guard or U.S. Department of Homeland Security, including federal regulations promulgated at 33 C.F.R. Chapter I, or subject to other federal law governing the transportation of hazardous materials; (f) a swimming pool; (g) a device containing surface water, groundwater, demineralized water, noncontact cooling water, drinking water for human or animal consumption, or water stored for fire or emergency purposes; (h) a device containing food or food-grade materials used for human or animal consumption and regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.); (i) a device holding wastewater that is being actively treated or processed, including a clarifier, chlorine contact chamber, or batch reactor; (j) a tank that is empty and is held in inventory or offered for sale; (k) a piece of electrical equipment, such as a transformer, circuit breaker, or voltage regulator transformer; (l) a device holding reclaimed water; or (m) a tank subject to the Virginia Gas and Oil Act, Chapter 22.1 (§ 45.1-361.1, et seq.) of Title 45.1 and regulations promulgated thereunder. "Aboveground storage tank" does not include a tank located on a farm, the contents of which are used exclusively for agricultural purposes.

"Containment and cleanup" means the abatement, containment, removal, and disposal of a hazardous substance not including oil and, to the extent possible, the restoration of the environment to its existing state prior to the discharge of the hazardous substance.

"Director" means the Director of the Department of Environmental Quality.

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

"Extremely hazardous substance" means any substance that is liquid at standard temperature and pressure and is listed as an Extremely Hazardous Substance in 40 C.F.R. Part 355.

"Facility" means any development, building, structure, or installation within the Commonwealth that includes an aboveground storage tank.

"Flood-exposed area" means any land within the Commonwealth that is (i) located in a 100-year or 500-year floodplain as designated by the Federal Emergency Management Agency or (ii) subject to storm surge from a hurricane designated by the National Oceanic and Atmospheric Administration as a Category 1 through a Category 4 hurricane.

"Hazardous substance" means (i) any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (ii) any extremely hazardous substance, and (iii) any substance determined by the Board pursuant to § 62.1-44.34:30 to be a hazardous substance. "Hazardous substance" does not include oil.

"Hazardous Substance Aboveground Storage Tank Fund" or "the Fund" means the fund created

60 pursuant to § 62.1-44.34:38.

61 "Oil" means oil of any kind and in any form, including petroleum and any petroleum by-product, fuel  
62 oil, lubricating oil, sludge, oil refuse, oil mixed with other wastes, crude oil, and any other liquid  
63 hydrocarbon regardless of specific gravity.

64 "Operator" means any person who owns, operates, rents, or otherwise exercises control over or  
65 responsibility for an aboveground storage tank or facility.

66 "Person" means any individual, two or more individuals, firm, corporation, association, partnership,  
67 or governmental unit or agency thereof.

68 "Secondary containment" means a safeguard applied to one or more aboveground storage tanks that  
69 prevents the discharge onto any land, storm drain system, or state waters of the entire capacity of the  
70 largest single tank and sufficient freeboard to contain precipitation. To qualify as secondary  
71 containment, the barrier and containment field shall be sufficiently impervious to contain fluids in the  
72 event of a discharge and may include double-walled tanks, dikes, containment curbs, pits, or drainage  
73 trench enclosures that safely confine the discharge from an aboveground storage tank in a facility  
74 catchment basin or holding pond. Any earthen dike or similar containment structure shall be designed  
75 and constructed to contain, for a minimum of 72 hours, fluid that escapes from an aboveground storage  
76 tank.

77 "Tank" means a device that is designed to contain an accumulation of a hazardous substance and is  
78 constructed of nonearthen materials that provide structural support, such as concrete, steel, or plastic.  
79 The term "tank" includes such a device whether it is located indoors or outdoors and whether it is fully  
80 enclosed or partially enclosed. The term "tank" does not include a flow-through process tank as defined  
81 in 40 C.F.R. Part 280.

82 "Underground area" means an underground room, including a basement or cellar, that provides  
83 enough space for the physical inspection of the exterior of any tank situated on or above the surface of  
84 the floor of such room.

85 **§ 62.1-44.34:30. Powers and duties of Board regarding aboveground storage tanks.**

86 The Board shall carry out the provisions of this article and compatible provisions of federal acts and  
87 is authorized to:

88 1. Exercise general supervision and control over aboveground storage tanks in the Commonwealth;

89 2. Provide technical assistance and advice concerning all aspects of aboveground storage tank  
90 management;

91 3. Collect data and information necessary to conduct the state aboveground storage tank program;

92 4. Apply for federal funds that become available under federal acts and transmit such funds to  
93 appropriate persons;

94 5. Adopt regulations for aboveground storage tanks establishing (i) construction, performance, and  
95 inspection standards; (ii) secondary containment requirements; (iii) registration requirements,  
96 registration fees, and registration renewal requirements and fees; (iv) recordkeeping requirements; (v)  
97 leak detection and inventory control requirements; (vi) discharge response plan requirements; (vii)  
98 prohibitions against the discharge of any hazardous substance from an aboveground storage tank; (viii)  
99 enforcement provisions; (ix) training or certification requirements for persons conducting inspections;  
100 (x) cleanup and containment requirements; and (xi) siting and construction standards for aboveground  
101 storage tanks installed after the effective date of such regulations;

102 6. Adopt regulations for aboveground storage tanks located in flood-exposed areas establishing  
103 standards and requirements in the fields listed in subdivision 5, making adjustments the Board deems  
104 necessary to reflect the increased flood risk to such tanks. Such regulations for flood-exposed areas may  
105 include a requirement to elevate aboveground storage tanks and associated secondary containment, but  
106 such elevation requirement shall apply only to aboveground storage tanks and associated secondary  
107 containment constructed after the effective date of the regulations adopted pursuant to this subdivision;

108 7. Seek recovery of costs incurred for undertaking corrective action or enforcement action with  
109 respect to the discharge of a hazardous substance from an aboveground storage tank;

110 8. Adopt regulations setting out a schedule of fees to cover the costs of enforcement, inspection,  
111 compliance monitoring, and other costs associated with carrying out the provisions of this article;

112 9. Designate substances as hazardous substances for the purposes of this article if such substances  
113 are likely to present a substantial danger to the public health or welfare or the environment when  
114 discharged; and

115 10. Adopt regulations necessary to carry out its powers and duties with regard to aboveground  
116 storage tanks in accordance with applicable state and federal laws and regulations. However, no  
117 regulation shall infringe upon any emergency release exemption outlined in 40 C.F.R. § 355.31.

118 **§ 62.1-44.34:31. Registration of aboveground storage tanks.**

119 A. By January 1, 2021, the operator of any aboveground storage tank shall register such tank with  
120 the Director. The registration for each aboveground storage tank shall contain the following  
121 information:

1. Information about the operator of the aboveground storage tank, including the operator's name and address and information about the operator's contact person.

2. Information about the owner of the tank, including the owner's name and address and information about the owner's contact person.

3. Information about the facility at which the tank is located, including its name and address, information about any on-site contact person, and the number of aboveground storage tanks at the same facility.

4. The date of installation of the tank.

5. The GPS (Global Positioning System) coordinates of the tank.

6. The capacity of the tank in gallons.

7. The current status of the tank, whether in service or out of service.

8. The manufacturer and model number of the tank, if known.

9. The current contents of the tank.

10. The predominant contents of the tank. For purposes of this section, "predominant contents" means the hazardous substance that was in the aboveground storage tank for the longest duration during the 12-month period preceding the registration or renewal.

11. The material of which the tank is constructed, including concrete, steel, plastic, fiberglass, or another material.

12. The material of which any release prevention barrier for the tank is constructed, including concrete, steel, plastic, fiberglass, or another material.

13. The type of cathodic protection provided for the tank, if any.

14. The type of overfill protection provided for the tank, if any.

15. The type of leak detection system provided for the tank, if any, including visual monitoring, an in-tank gauging system, interstitial monitoring, soil vapor monitoring, or another system.

The registration shall be signed by an authorized representative of the operator, who shall certify on the registration: "I certify under penalty of perjury that I have personally examined and am familiar with the information submitted in this registration and that I believe that the submitted information is true, accurate, and complete."

Each operator shall send a copy of the registration for each aboveground tank to the local director of emergency management appointed pursuant to § 44-146.19.

B. The Director may prepare an appropriate registration form or online submission system upon which an operator can provide the information required in this section. An operator shall be able to register multiple aboveground storage tanks using a single form or submission.

C. Each registration shall be accompanied by a registration fee, payable to the State Treasurer and creditable to the Hazardous Substance Aboveground Storage Tank Fund established pursuant to § 62.1-44.34:38, as follows: \$150 for any aboveground storage tank with a capacity of less than 5,000 gallons; \$250 for any aboveground storage tank with a capacity of 5,000 gallons or more but less than 25,000 gallons; and \$600 for any aboveground storage tank with a capacity of 25,000 gallons or more. No political subdivision of the Commonwealth shall charge a fee in connection with the registration of any aboveground storage tank under this article.

D. An operator shall, within 30 days after the installation of a new aboveground storage tank, submit a registration and the appropriate registration fee to the Director and send a copy of the registration to the local director of emergency management.

E. Beginning July 1, 2022, and ending January 1, 2023, or within 30 days of any change in title to an aboveground storage tank that occurs before July 1, 2022, each operator shall submit a registration renewal to the Director and the local director of emergency management. Such registration renewal shall contain the information required in subsection A and shall be accompanied by the appropriate registration fee listed in subsection C.

F. By July 1, 2022, the Board shall adopt regulations regarding registration requirements, registration fees, and registration renewal requirements and fees. Such regulations may require operators to submit information that differs from that listed in subsection A and fees that differ from those listed in subsection C. The Board shall establish a schedule for registration renewals that allows no more than two years between renewals. The schedule of fees established by the Board's regulations and the assessment of such fees for registration or registration renewal shall be designed and managed by the Board so as to generate funds sufficient to cover all anticipated costs of oversight, management, and implementation of the provisions of this article, excluding the costs of corrective action or emergency response.

G. By June 1, 2021, the Director shall compile an inventory of aboveground storage tanks in the Commonwealth based upon the registrations received. The inventory shall be updated at least annually thereafter, or upon adoption of a different schedule as specified by the Board through regulation.

**§ 62.1-44.34:32. Evaluation and inspection of aboveground storage tanks.**

183 A. Within six months after the effective date of regulations adopted by the Board implementing  
184 § 62.1-44.34:31, each aboveground storage tank and, if applicable, its associated secondary containment  
185 structure shall be initially evaluated by visual inspection by the operator or the operator's designee to  
186 prevent and identify leaks. Such inspection shall be conducted in accordance with applicable federal and  
187 state regulations or a checklist approved by the Board and shall be conducted at regular intervals  
188 thereafter as established by the Board, but not less frequently than once per calendar year. For any  
189 aboveground storage tank described in subsection B, the evaluation required by subsection B shall  
190 substitute for one of the evaluations required of the operator or operator's designee pursuant to this  
191 subsection. Each operator shall maintain records of all completed visual inspections and shall make  
192 such records available upon request of the Board or the Director.

193 B. Every aboveground storage tank that (i) has a storage capacity of 5,000 gallons or more, and any  
194 associated secondary containment structure; (ii) contains an extremely hazardous substance, and any  
195 associated secondary containment structure; or (iii) was installed before January 1, 1990, shall be  
196 evaluated by a qualified licensed professional engineer, a qualified person working under the direct  
197 supervision of a licensed professional engineer, a person certified to perform aboveground storage tank  
198 inspections by the American Petroleum Institute or STI/SPFA, or a person holding certification under  
199 another program approved by the Director. Each operator shall submit a certification that each  
200 aboveground storage tank subject to this subsection and any associated secondary containment structure  
201 has been evaluated by a qualified person and meets the standards established in regulations adopted by  
202 the Board. Such certification form shall be submitted to the Director no later than six months after the  
203 effective date of regulations adopted by the Board implementing § 62.1-44.34:31, and subsequent  
204 certifications shall be due at regular intervals thereafter as established by the Board, but not more  
205 frequently than once per calendar year.

206 C. Any operator of an aboveground storage tank shall, upon request of the Director or his designee,  
207 furnish information relating to such tank and any associated equipment and contents; conduct  
208 reasonable monitoring or testing; permit the Director, at all reasonable times, to inspect and copy  
209 records relating to such tank; and permit the Director to have access to any aboveground storage tank  
210 for containment and cleanup. The Director or his designee may enter at any time any establishment or  
211 other place where an aboveground storage tank is located; inspect and obtain samples of any fluid  
212 contained in an aboveground storage tank; conduct monitoring or testing of any aboveground storage  
213 tank, associated equipment, or contents, or surrounding soils, surface water, or groundwater; and  
214 undertake containment and cleanup pertaining to a discharge or a substantial threat of a discharge as  
215 provided in this article. Each inspection shall be commenced and completed with reasonable  
216 promptness.

217 **§ 62.1-44.34:33. Discharge prohibited; aboveground storage tank safety.**

218 A. The discharge of a hazardous substance from an aboveground storage tank into or upon any land,  
219 storm drain system, or state waters is prohibited.

220 B. The operator of any facility with an aggregate aboveground storage tank capacity of 25,000  
221 gallons or more, or of any aboveground storage tank with a storage capacity of 25,000 gallons or more,  
222 shall install and maintain a secondary containment infrastructure according to regulations adopted by  
223 the Board pursuant to § 62.1-44.34:30. Such secondary containment infrastructure shall be installed  
224 within one calendar year from the effective date of such regulations. Such secondary containment  
225 infrastructure shall be sufficiently impervious to contain fluids in the event of a discharge and may  
226 include double-walled tanks, dikes, containment curbs, pits, or drainage trench enclosures that safely  
227 confine the discharge from an aboveground storage tank in a facility catchment basin or holding pond.  
228 Any earthen dike or similar containment structure shall be designed and constructed to contain, for a  
229 minimum of 72 hours, fluid that escapes from an aboveground storage tank.

230 **§ 62.1-44.34:34. Financial responsibility for aboveground storage tanks.**

231 A. The Board shall adopt regulations requiring every operator of an aboveground storage tank to  
232 demonstrate financial responsibility sufficient to comply with the requirements of this article as a  
233 condition of operation of such tank. Regulations governing the amount of financial responsibility  
234 required shall take into consideration the type, storage capacity, and location of an aboveground  
235 storage tank, the risk of a discharge of a hazardous substance from that type of aboveground storage  
236 tank in the Commonwealth, the potential damage or injury to any land, storm drain system, or state  
237 waters or the impairment of their beneficial use that may result from such discharge, the potential cost  
238 of containment and cleanup from such discharge, and the nature and degree of injury or interference  
239 with general health, welfare, and property that may result from such discharge. The Board may waive  
240 the financial responsibility requirement for an aboveground storage tank, or categories of such tanks,  
241 that, in the judgment of the Board, poses a de minimis risk to public health or the environment. In no  
242 instance shall any financial test of self-insurance require the operator of an aboveground storage tank  
243 to demonstrate more than \$1 of net worth for each dollar of required financial responsibility. If such net  
244 worth does not equal the required financial responsibility, then the operator shall demonstrate the

minimum required amount of financial responsibility by a combination of financial responsibility mechanisms in accordance with subsection B. No governmental agency shall be required to comply with any such regulations.

B. An operator may demonstrate financial responsibility by self-insurance, insurance, guaranty, surety, or any other method approved by the Board, or any combination thereof, under terms the Board prescribes. An operator of an aboveground storage tank may obtain an instrument of insurance, guaranty, or surety that covers multiple aboveground storage tanks. An operator of an aboveground storage tank whose financial responsibility is accepted by the Board under this subsection shall notify the Board at least 30 days before the effective date of a change, expiration, or cancellation of any instrument of insurance, guaranty, or surety.

C. Acceptance by the Board of proof of financial responsibility for an aboveground storage tank shall expire:

1. On the effective date of any change in the operator's instrument of insurance, guaranty, or surety for an aboveground storage tank or tanks; or

2. Upon the expiration or cancellation of any instrument of insurance, guaranty, or surety for an aboveground storage tank or tanks.

D. Every operator shall file an application for renewal of acceptance of proof of financial responsibility at least 30 days before the date of expiration.

E. Every operator of an aboveground storage tank shall annually demonstrate and maintain evidence of financial responsibility for containment and cleanup in accordance with regulations adopted by the Board.

F. The Board, after notice and opportunity for a conference pursuant to § 2.2-4019, 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.

G. It is not a defense to any action brought for failure to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the operator of the aboveground storage tank possessed evidence of financial responsibility accepted by the Board.

**§ 62.1-44.34:35. Discharge response plans.**

A. Beginning one year after the effective date of regulations adopted by the Board pursuant to § 62.1-44.34:30, no operator shall cause or permit the operation of any aboveground storage tank at any site in the Commonwealth where the aggregate capacity of aboveground storage tanks at such site and under the control of the operator is 25,000 gallons or more, unless a discharge response plan applicable to all aboveground storage tanks at such site and under the control of the operator has been filed with and approved by the Director. A plan approved by the Director may cover multiple aboveground storage tanks as a single site or under the control of a single operator. Within 30 days of approval of the discharge response plan, the operator shall provide the discharge response plan to the nearest downstream public water supply and the local emergency response committee that covers the city or the county and town in which the aboveground storage tank is located.

B. Application for approval of a discharge response plan shall be made to the Director and shall be accompanied by plans, specifications, maps, and any other relevant information the Director requires, in scope and detail satisfactory to the Director. A discharge response plan shall conform to the requirements and standards determined by the Director to be necessary to ensure that the applicant can take the steps necessary to protect environmentally sensitive areas, to respond to the threat of a discharge of a hazardous substance, and to contain, clean up, and mitigate a discharge of a hazardous substance 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 Director 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 aboveground storage tank covered by the plan if such change will necessitate a change in the plan. The applicant shall update the plan once every five years. The Director, on a finding of need, may require a discharge exercise designed to demonstrate the operator's ability to implement its discharge response 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 an approval of a discharge response plan if it determines that:

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

2. The operator's discharge response experience or its inability to implement its plan in a hazardous substance discharge response 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 a conference pursuant to § 2.2-4019, may revoke an approval of a discharge response 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.

**§ 62.1-44.34:36. Reporting of discharge.**

Any person discharging or causing or permitting a discharge from an aboveground storage tank of a hazardous substance that (i) enters into or upon any land, storm drain system, or state waters within the Commonwealth or (ii) reasonably may be expected to enter such waters, land, or drain system, and any operator of an aboveground storage tank from which there is such a discharge, shall, immediately upon learning of the discharge, notify the following of such discharge: (a) the Board; (b) the local director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs; (c) the local director or coordinator of emergency services appointed pursuant to § 44-146.19 for any other political subdivision reasonably expected to be affected by the discharge; and (d) appropriate federal or state authorities.

**§ 62.1-44.34:37. Containment and cleanup of a discharge; liability.**

A. Any person (i) discharging or causing or permitting a discharge of a hazardous substance from an aboveground storage tank into or upon, or that may reasonably be expected to enter, any land, storm drain system, or state waters within the Commonwealth or (ii) causing or permitting a substantial threat of such discharge, shall, immediately upon learning of such discharge or threat of discharge, implement any applicable discharge response plan approved under this article or take other actions the Board deems necessary to contain and clean up such discharge or threat of discharge.

B. Any operator of an aboveground storage tank from which there is (i) a discharge of a hazardous substance into or upon, or that may reasonably be expected to enter, any land, storm drain system, or state waters or (ii) a substantial threat of such discharge, shall, immediately upon learning of such discharge or threat of discharge, implement any applicable discharge response plan approved under this article or take other actions the Board deems necessary to contain and clean up such discharge or threat of discharge.

C. If the person responsible for a discharge or threat of discharge cannot be determined immediately, or if such person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take actions necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons.

D. Any person (i) discharging or causing or permitting a discharge of a hazardous substance from an aboveground storage tank into or upon, or that may reasonably be expected to enter, any land, storm drain system, or state waters within the Commonwealth or (ii) causing or permitting a substantial threat of such discharge, and the operator of any aboveground storage tank from which there is a discharge of a hazardous substance into or upon, or that may reasonably be expected to enter, any land, storm drain system, or state waters within the Commonwealth shall be liable to:

1. The Commonwealth or any political subdivision thereof for all costs and expenses of investigation, 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 political subdivision, in and for preventing or alleviating damage, loss, hardship, or harm to human health or the environment 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; and

3. The Commonwealth or any political subdivision thereof for loss of tax or other revenues caused by such discharge and for the monetary value of natural resources damaged by the discharge. Such monetary value shall be calculated by the Board in consultation with the Director and with other appropriate officials of the Commonwealth and subdivisions thereof.

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

F. All expenses, costs, civil penalties, charges, and judgments recovered by or on behalf of the Board pursuant to this section shall be paid into the state treasury and credited to the Virginia Environmental Emergency Response Fund established pursuant to § 10.1-2500.

**§ 62.1-44.34:38. Hazardous Substance Aboveground Storage Tank Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Hazardous Substance Aboveground Storage Tank Fund. The Fund shall be established on the books of the Comptroller. All moneys received by or on behalf of the Board pursuant to this article or any regulation adopted thereunder, except moneys received pursuant to § 62.1-44.34:37 or a regulation directing that moneys received be paid into the state treasury and credited to the Virginia

Environmental Emergency Response Fund established pursuant to § 10.1-2500, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of administering the state regulatory programs authorized by this article and shall not be used for corrective action or containment and cleanup. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director or his designee.

**§ 62.1-44.34:39. Enforcement; civil penalties.**

A. Upon a finding of a violation of any provision of this article, regulation, or 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 order shall be issued only after notice and an opportunity for hearing. However, if the Board finds that a 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 another reasonable use, the Board may issue, without advance notice or hearing, an emergency special order requiring the operator of any aboveground storage tank to cease such discharge immediately, to implement any applicable discharge response plan, and to effect containment and cleanup. Such emergency special order may also require the operator to modify or cease regular operation of the aboveground storage tank, or to make repairs necessary to avoid the emergency, until the Board determines that continuing regular operation of the aboveground storage tank 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 does not comply with the terms thereof, the Board may proceed in accordance with subsection B, and if 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 operation of an aboveground storage tank, the Board shall provide an opportunity for a hearing within 48 hours of the issuance of the injunction.

B. In the event of a (i) violation of any provision of this article, regulation, administrative or judicial order, or term or condition of approval issued under this article, or (ii) 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 any affirmative equitable relief that is appropriate, and to recover all costs, damages, and civil penalties resulting from such violation or failure to comply. The Board shall be entitled to an award of reasonable attorney fees and costs in any action in which it is a prevailing party.

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

1. For failing to register an aboveground storage tank in accordance with § 62.1-44.34:31 or inspect or evaluate an aboveground storage tank in accordance with § 62.1-44.34:32, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;

2. For failing to obtain approval of a discharge response plan as required by § 62.1-44.34:35, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$5,000 per day for each day of violation thereafter;

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

4. For failing to report a discharge as required by § 62.1-44.34:36 or failing to cooperate in containment and cleanup of a discharge as required by § 62.1-44.34:37, not less than \$1,000 nor more than \$50,000 for the initial violation, and \$10,000 for each day of violation thereafter; and

5. For violating or causing or permitting to be violated any other provision of this article, regulation, administrative or judicial order, or term or condition of approval issued under this article, up to \$32,500 for each violation.

D. Civil penalties may be assessed under this article either (i) by a court in an action brought by the Board pursuant to this section, as specified in § 62.1-44.15, or (ii) with the consent of the person charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund established



429 pursuant to § 10.1-2500. In determining the amount of any penalty, consideration shall be given to the  
430 amount of the hazardous substance stored or discharged, the characteristics of the hazardous substance,  
431 the willfulness of the violation, any history of noncompliance, the actions of the person in reporting,  
432 containing, and cleaning up any discharge or threat of discharge, the damage or injury to state waters  
433 or the impairment of their beneficial use, the cost of containment and cleanup, the nature and degree of  
434 injury to or interference with general health, welfare, and property, and the available technology for  
435 preventing, containing, reducing, or eliminating the discharge.

436 E. Any person who knowingly violates, or causes or permits to be violated, any provision of this  
437 article, regulation, administrative or judicial order, or term or condition of approval issued under this  
438 article is guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a  
439 fine of not more than \$100,000, either or both. Any person who knowingly or willfully makes any false  
440 statement, representation, or certification in any application, record, report, plan, or other document  
441 filed or required to be maintained by this article or by an administrative or judicial order issued under  
442 this article is guilty of a felony punishable by a term of imprisonment of not less than one nor more  
443 than three years and a fine of not more than \$100,000, either or both.

444 F. In the case of a discharge of a hazardous substance into or upon state waters within the  
445 Commonwealth:

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

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

452 G. Upon conviction for a violation of any provision of this article, or a regulation, administrative or  
453 judicial order, or term or condition of approval issued under this article, a defendant who is not an  
454 individual shall be sentenced to pay a civil penalty not exceeding the greater of (i) \$500,000 or (ii) an  
455 amount that is three times the economic benefit, if any, realized by the defendant as a result of the  
456 offense.

457 H. The Board shall develop and provide an opportunity for public comment on guidelines and  
458 procedures that contain specific criteria for calculating the appropriate penalty for each violation based  
459 upon the amount of the hazardous substance stored or discharged, the characteristics of the hazardous  
460 substance, the willfulness of the violation, any history of noncompliance, the actions of the person in  
461 reporting, containing, and cleaning up any discharge or threat of discharge, the damage or injury to  
462 state waters or the impairment of their beneficial use, the cost of containment and cleanup, the nature  
463 and degree of injury to or interference with general health, welfare, and property, and the available  
464 technology for preventing, containing, reducing, or eliminating the discharge.

465 2. That the provisions of this act may result in a net increase in periods of imprisonment or  
466 commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the  
467 necessary appropriation cannot be determined for periods of imprisonment in state adult  
468 correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia  
469 Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to  
470 § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be  
471 determined for periods of commitment to the custody of the Department of Juvenile Justice.

472 3. In developing regulations required by this act, the State Water Control Board and the Director  
473 of the Department of Environmental Quality (the Director) shall consult with relevant  
474 stakeholders, including the Virginia Manufacturers Association, James River Association, Virginia  
475 Agribusiness Council, and Virginia Association of Municipal Wastewater Agencies to identify and  
476 verify applicable existing construction standards and building codes, industry standards and best  
477 practices, insurance standards, federal and state regulations, emergency response plan regulations  
478 and standards, environmental management plan regulations and standards, and risk-based  
479 inspection standards. The Director shall also evaluate currently available information obtained by  
480 federal, state, and local government from owners of aboveground storage tanks that could be  
481 harmonized for purposes of reducing compliance costs and improving compliance training. The  
482 Director shall review regulatory reports that include relevant emergency response plans covering  
483 hazardous substance aboveground storage tanks. Any regulation governing tank inspections shall  
484 be based on best practices for tank inspections and on the risk posed by the tank. The Director  
485 shall consider information from stakeholders as part of the rulemaking process, including any  
486 Notice of Intended Regulatory Action.