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HOUSE BILL NO. 1192

Offered January 8, 2020

Prefiled January 7, 2020

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.

Patron—Lopez

Referred to Committee on Agriculture, Chesapeake and Natural Resources

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 1,320 gallons, excluding its associated pipes, (ii) that is used for storing a liquid hazardous substance at standard temperature and pressure, and (iii) 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; or (k) a piece of electrical equipment, such as a transformer, circuit breaker, or voltage regulator transformer. "Aboveground storage tank" does not include a tank located on a farm, the contents of which are used exclusively for agricultural purposes on the farm where such tank is located, unless such tank has a storage capacity of (1) more than 1,320 gallons and contains an extremely hazardous substance or (2) 25,000 gallons or more and contains a hazardous substance.

"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

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59 hazardous substance. "Hazardous substance" does not include oil.

60 "Hazardous Substance Aboveground Storage Tank Fund" or "the Fund" means the fund created
61 pursuant to § 62.1-44.34:38.

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

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

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

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

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

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

86 **§ 62.1-44.34:30. Powers and duties of Board regarding aboveground storage tanks.**

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

- 89 1. Exercise general supervision and control over aboveground storage tanks in the Commonwealth;
- 90 2. Provide technical assistance and advice concerning all aspects of aboveground storage tank
91 management;
- 92 3. Collect data and information necessary to conduct the state aboveground storage tank program;
- 93 4. Apply for federal funds that become available under federal acts and transmit such funds to
94 appropriate persons;
- 95 5. Adopt regulations for aboveground storage tanks establishing (i) construction, performance, and
96 inspection standards; (ii) secondary containment requirements; (iii) registration requirements,
97 registration fees, and registration renewal requirements and fees; (iv) recordkeeping requirements; (v)
98 leak detection and inventory control requirements; (vi) discharge response plan requirements; (vii)
99 prohibitions against the discharge of any hazardous substance from an aboveground storage tank; (viii)
100 enforcement provisions; (ix) training or certification requirements for persons conducting inspections;
101 (x) cleanup and containment requirements; and (xi) siting and construction standards for aboveground
102 storage tanks installed after the effective date of such regulations;
- 103 6. Adopt regulations for aboveground storage tanks located in flood-exposed areas establishing
104 standards and requirements in the fields listed in subdivision 5, making adjustments the Board deems
105 necessary to reflect the increased flood risk to such tanks. Such regulations for flood-exposed areas may
106 include a requirement to elevate aboveground storage tanks and associated secondary containment, but
107 such elevation requirement shall apply only to aboveground storage tanks and associated secondary
108 containment constructed after the effective date of the regulations adopted pursuant to this subdivision;
- 109 7. Seek recovery of costs incurred for undertaking corrective action or enforcement action with
110 respect to the discharge of a hazardous substance from an aboveground storage tank;
- 111 8. Adopt regulations setting out a schedule of fees to cover the costs of enforcement, inspection,
112 compliance monitoring, and other costs associated with carrying out the provisions of this article;
- 113 9. Designate substances as hazardous substances for the purposes of this article if such substances
114 are likely to present a substantial danger to the public health or welfare or the environment when
115 discharged;
- 116 10. Adopt regulations setting out a schedule of civil fines to be imposed for violations of this article
117 based on the danger presented by the hazardous substance discharged and the amount of such
118 substance discharged. Such fines shall be no less stringent than those established in § 62.1-44.34:20;
119 and
- 120 11. Adopt regulations necessary to carry out its powers and duties with regard to aboveground

storage tanks in accordance with applicable state and federal laws and regulations.

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

A. By January 1, 2021, the operator of any aboveground storage tank shall register such tank with the Director. The registration for each aboveground storage tank shall contain the following 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 and shall make such inventory publicly available on the Internet. 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.

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

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

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

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

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

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

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

A. The Board shall adopt regulations requiring every operator of an aboveground storage tank to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation of such tank. Regulations governing the amount of financial responsibility required shall take into consideration the type, storage capacity, and location of an aboveground storage tank, the risk of a discharge of a hazardous substance from that type of aboveground storage tank in the Commonwealth, the potential damage or injury to any land, storm drain system, or state waters or the impairment of their beneficial use that may result from such discharge, the potential cost of containment and cleanup from such discharge, and the nature and degree of injury or interference

with general health, welfare, and property that may result from such discharge. The Board may waive the financial responsibility requirement for an aboveground storage tank, or categories of such tanks, that, in the judgment of the Board, poses a de minimis risk to public health or the environment. In no instance shall any financial test of self-insurance require the operator of an aboveground storage tank to demonstrate more than \$1 of net worth for each dollar of required financial responsibility. If such net worth does not equal the required financial responsibility, then the operator shall demonstrate the minimum required amount 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 six months 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 periodically as required by the Board, but in no event more frequently than once every 36 months. 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 discharging or causing or permitting a discharge of a hazardous substance to any land, storm drain system, or state waters in violation of § 62.1-44.34:33, or owning or operating any aboveground storage tank from which such discharge originates, up to an amount, as established in regulations

428 adopted by the Board pursuant to § 62.1-44.34:30, per gallon of hazardous substance discharged;

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

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

435 D. Civil penalties may be assessed under this article either (i) by a court in an action brought by the
436 Board pursuant to this section, as specified in § 62.1-44.15, or (ii) with the consent of the person
437 charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and
438 deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund established
439 pursuant to § 10.1-2500. In determining the amount of any penalty, consideration shall be given to the
440 willfulness of the violation, any history of noncompliance, the actions of the person in reporting,
441 containing, and cleaning up any discharge or threat of discharge, the damage or injury to state waters
442 or the impairment of their beneficial use, the cost of containment and cleanup, the nature and degree of
443 injury to or interference with general health, welfare, and property, and the available technology for
444 preventing, containing, reducing, or eliminating the discharge.

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

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

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

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

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

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