

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 277

*An Act to amend and reenact §§ 62.1-44.34:14, 62.1-44.34:15.1, and 62.1-44.34:17 of the Code of Virginia, relating to aboveground storage tanks.*

[H 654]

Approved April 4, 1994

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 62.1-44.34:14, 62.1-44.34:15.1, and 62.1-44.34:17 of the Code of Virginia are amended and reenacted as follows:**

§ 62.1-44.34:14. Definitions.

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

"Aboveground storage tank" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

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

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"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, rights-of-way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel or plastic, which provide structural support. This term does not include flow-through process equipment used in processing or treating oil by physical, biological, or chemical means tanks as defined in 40 CFR Part 280.

"Tank vessel" means any vessel used in the transportation of oil as cargo.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

§ 62.1-44.34:15.1. Regulations for aboveground storage tanks.

The Board shall adopt regulations and develop procedures necessary to prevent pollution of state waters, lands, or storm drain systems from the discharge of oil from new and existing aboveground storage tanks. These regulations shall be developed in substantial conformity with the current codes and standards recommended by the National Fire Protection Association. To the extent that they are consistent with the Board's program, the Board shall incorporate accepted industry practices contained in the American Petroleum Institute publications and other accepted industry standards when developing the regulations contemplated by this section. The regulations shall provide the following:

1. For existing aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control, testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board) and formal tank inspections every five years in accordance with accepted industry practices and procedures approved by the Board. Initial testing shall be on a schedule approved by the Board. *For facilities not engaged in the resale of oil, aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations.*

*In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;*

b. To prevent overfills, requirements for safe fill and shut down procedures, including an audible staged alarm with immediate and controlled shut down procedures, or equivalent measures established by the Board;

c. To prevent leaks from piping, requirements for cathodic protection, and pressure testing to be conducted at least once every five years, or equivalent measures established by the Board;

d. To prevent and identify leaks from any source, requirements (i) for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements, (ii) for monthly gauging and inspection of all ground water monitoring wells located at the facility, and monitoring of the well head space for the presence of vapors indicating the presence of petroleum, and (iii) for quarterly sampling and laboratory analysis of the fluids present in each such monitoring well to determine the presence of petroleum or petroleum by-product contamination; and

e. To ensure proper training of individuals conducting inspections, requirements for proper certification or training by operators relative to aboveground storage tanks.

2. For existing aboveground storage tanks at facilities with an aggregate capacity of less than one million gallons but more than 25,000 gallons:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control and testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board). Initial testing shall be on a schedule approved by the Board. *For facilities not engaged in the resale of oil, aboveground storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;*

b. To prevent overfills, requirements for safe fill and shut down procedures;

c. To prevent leaks from piping, requirements for pressure testing to be conducted at least once every five years or equivalent measures established by the Board; and

d. To prevent and identify leaks from any source, requirements for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements developed in accordance with subdivision 1 of this section.

3. For aboveground storage tanks existing prior to the effective date of the regulations required by this section, when the results of a tank inspection indicate the need for replacement of the tank bottom, the operator of a facility shall install a release prevention barrier (RPB) capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection. The decision to replace an existing tank bottom shall be based on the criteria established by regulations pursuant to this section.

4. The Board shall establish performance standards for aboveground storage tanks installed, retrofitted or brought into use after the effective date of the regulations promulgated pursuant to this subsection that incorporate all technologies designed to prevent oil discharges that have been proven in accordance with accepted industry practices and shown to be cost-effective.

5. *The Board shall establish criteria for granting variances from the requirements of the regulations promulgated pursuant to this section (i) on a case-by-case basis and (ii) by regulation for categories of aboveground storage tanks, except that the Board shall not grant a variance that would result in an unreasonable risk to the public health or the environment, or that would apply to facilities engaged in the resale of oil. Variances by regulation shall be based on relevant factors such as tank size, use, and location.*

§ 62.1-44.34:17. Exemptions.

A. Sections 62.1-44.34:15 and 62.1-44.34:16 do not apply to a facility having a maximum storage or handling capacity of less than 25,000 gallons of oil or to a tank vessel having a maximum storage, handling or transporting capacity of less than 15,000 gallons of oil or to a tank used to contain oil for less than 120 days and only in connection with activities related to the containment and cleanup of oil or to any vessel engaged only in activities within state waters related to the containment and cleanup of oil, including response-related training or drills.

B. Facilities having a maximum storage or handling capacity of between 25,000 gallons and one million gallons of oil shall be exempt until July 1, 1993, from any requirement under § 62.1-44.34:15 to install groundwater monitoring wells or other groundwater protection devices.

C. For purposes of §§ 62.1-44.34:15 and 62.1-44.34:16, the definition of oil does not include nonpetroleum hydrocarbon-based animal and vegetable oils, or petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601) and which is subject to the provisions of that Act.

*D. Facilities not engaged in the resale of oil from aboveground storage tanks shall not be subject to regulations promulgated pursuant to § 62.1-44.34:15.1 until July 1, 1995, or any date later specified by the Board.*

*E. Aboveground storage tanks with a capacity of 5,000 gallons or less containing heating oil for consumption on the premises where stored shall be exempt from the provisions of § 62.1-44.34:15.1.*

**2. That an emergency exists and this act is in force from its passage.**