

LD6582360

## HOUSE BILL NO. 973

Offered January 25, 1994

A BILL to amend the Code of Virginia by adding in Chapter 3.1 of Title 62.1 an article numbered 11.1, consisting of sections numbered 62.1-44.34:23.1, 62.1-44.34:23.2, and 62.1-44.34:23.3, relating to liability for discharges to state waters, lands and storm drains.

Patron—Moore

Referred to Committee on Chesapeake and Its Tributaries

**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 11.1, consisting of sections numbered 62.1-44.34:23.1, 62.1-44.34:23.2, and 62.1-44.34:23.3 as follows:**

*Article 11.1.*

*Discharges to state waters and lands and to storm drain systems.*

*§ 62.1-44.34:23.1. Definitions.*

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

*"Containment and cleanup" means abatement, containment, removal and disposal of sewage, industrial wastes, other wastes or any noxious or deleterious substances and, to the extent possible, the restoration of the environment to its existing state prior to such discharge.*

*"Discharge" means the unpermitted release, spilling, leaking, pumping, pouring, emitting, emptying or dumping of sewage, industrial wastes, other wastes or any noxious or deleterious substances or otherwise altering the physical, chemical or biological properties of the water or lands of the state. The term does not include oil as defined in § 62.1-44.34:14.*

*"Facility" means any development or installation within the Commonwealth that deals in, stores or handles sewage, industrial wastes, other wastes or any noxious or deleterious substances.*

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

*"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 transportation on water, whether self-propelled or otherwise, and shall include barges and tugs.*

*§ 62.1-44.34:23.2. Prohibition on discharges to state waters, lands and storm drains; liability.*

*A. The discharge of sewage, industrial wastes, other wastes or any noxious or deleterious substances into or upon state waters, lands or storm drain systems within the Commonwealth or the otherwise altering of the physical, chemical or biological properties of state waters or lands is prohibited except in compliance with a valid certificate or permit issued by the Board.*

*B. Any person discharging or causing or permitting a discharge into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge that may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge, shall be liable to:*

*1. The Commonwealth of Virginia 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, but not limited to, 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 of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;*

*3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge;*

*4. The Commonwealth of Virginia or any political subdivision thereof for the cost of restocking, replenishing or restoring natural resources and for natural resources that cannot be restocked, replenished or restored; and*

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

64 C. In any action brought under this section, it shall not be necessary for the Commonwealth,  
65 political subdivision or any person, to plead or prove negligence in any form or manner.

66 D. In any action brought under this section, the Commonwealth, political subdivision or any person,  
67 if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

68 E. It shall be a defense to any action brought under subdivision B 2, B 3, B 4, or B 5 of this section  
69 that the discharge or threat of discharge was caused solely by (i) an act of God, (ii) an act of war, (iii)  
70 a willful act or omission of a third party who is not an employee, agent or contractor of the person or  
71 operator, or (iv) any combination of the foregoing; however, this subsection shall not apply to any  
72 action brought against (a) a person or operator who failed or refused to report a discharge as required  
73 by § 62.1-44.34:23.3 or (b) a person or operator responsible for the discharge or threat of discharge  
74 who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to  
75 effect containment and cleanup.

76 F. In any action brought under subdivision B 2, B 3, B 4 or B 5 of this section, the total liability of  
77 a person or operator under this section for each discharge or threat of such discharge shall not exceed  
78 the cost of cleanup and containment, response and natural resource related costs or ten million dollars,  
79 whichever is greater; however, there shall be no limit of liability imposed under this section: (i) if the  
80 discharge or threat of discharge was caused by gross negligence or willful misconduct on the part of  
81 the person or the operator discharging or causing or permitting the discharge or threat of discharge or  
82 by an agent, employee or contractor of such person or operator, or by the violation of any applicable  
83 safety, construction or operation regulations by such person or operator or an agent, employee or  
84 contractor of such person or operator; or (ii) if the operator or person discharging or causing or  
85 permitting a discharge or threat of discharge failed or refused to report the discharge as required by  
86 § 62.1-44.34:23.3, or failed or refused to cooperate fully in any containment and cleanup or to effect  
87 containment and cleanup of a discharge which such operator or person caused or permitted.

88 § 62.1-44.34:23.3. Reporting of discharges.

89 Any person discharging or causing or permitting a discharge into or upon state waters, lands, or  
90 storm drain systems within the Commonwealth or discharging or causing or permitting a discharge  
91 which may reasonably be expected to enter state waters, lands, or storm drain systems within the  
92 Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge into  
93 state waters, lands, or storm drain systems, or from which there is a discharge which may reasonably  
94 be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the  
95 discharge, notify the Board, the director or coordinator of emergency services appointed pursuant to  
96 § 44-146.19 for the political subdivision in which the discharge occurs and any other political  
97 subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of  
98 such discharge.