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## HOUSE BILL NO. 1144

Offered January 22, 1996

A *BILL to amend and reenact §§ 62.1-44.31 and 62.1-44.32 of the Code of Virginia, relating to liability for discharges into state waters.*

Patron—Tata

Referred to Committee on Chesapeake and Its Tributaries

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

**1. That §§ 62.1-44.31 and 62.1-44.32 of the Code of Virginia are amended and reenacted as follows:**

§ 62.1-44.31. Violation of special order or certificate or failure to cooperate with Board.

It shall be unlawful for any owner to fail to comply with any special order adopted by the Board, which has become final under the provisions of this chapter, or to fail to comply with a pretreatment condition incorporated into the permit issued to it by the owner of a publicly owned treatment works or to fail to comply with any pretreatment standard or pretreatment requirement, or to discharge sewage, industrial waste or other waste in violation of any condition contained in a certificate issued by the Board or in excess of the waste covered by such certificate, or to fail or refuse to furnish information, plans, specifications or other data reasonably necessary and pertinent required by the Board under this chapter.

*When seeking to enforce the provisions of this section, in situations where a county, city or town or an agent of such locality may be considered an owner that may be held responsible for the violation, the Board shall not issue a notice of violation to such county, city, or town or agent unless (i) the Board is unable to identify, in a timely manner, the person proximately causing the violation, or (ii) the locality or agent is the proximate cause of the violation. The Board is not prohibited from bringing an action against any owner to avoid the running of any applicable statute of limitations.*

For the purpose of this section, the term "owner" shall mean, in addition to the definition contained in § 62.1-44.3, any responsible corporate officer so designated in the applicable discharge permit.

§ 62.1-44.32. Penalties.

(a) Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any order of the Board, or order of a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$25,000 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used for the purpose of abating environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is such county, city or town itself, or its agent, the court shall direct such penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of Title 10.1, excluding penalties assessed for violations of Article 9 or 10 of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

In the event that a county, city, or town, or its agent, is the owner, such county, city, or town, or its agent, may initiate a civil action against any person causing or contributing to a violation of this chapter, including any user or users of a waste water treatment facility, to recover that portion of any civil penalty imposed against the owner proximately resulting from the act or acts of such person, user or users in violation of any applicable federal, state, or local requirements. A county, city, town or a locality's agent may also recover from the person violating this chapter the reasonable costs of investigation, containment, cleanup, remediation, litigation and attorney fees incurred by it and resulting from the violation.

*When seeking to enforce the provisions of this subsection, in situations where a county, city, or town or an agent of such locality may be considered an owner that may be held responsible for such violation, the Board shall not seek civil penalties from such county, city, town or agent unless (i) the Board is unable to identify in a timely manner the person proximately causing the violation, or (ii) the*

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HB1144

60 county, city, town, or agent is the proximate cause of the violation. The Board is not prohibited from  
61 bringing an action against any owner to avoid the running of any applicable statute of limitation.

62 (b) Any person who willfully or negligently violates any provision of this chapter, any regulation or  
63 order of the Board, any condition of a certificate or any order of a court shall be guilty of a  
64 misdemeanor punishable by confinement in jail for not more than twelve months and a fine of not less  
65 than \$2,500 nor more than \$25,000, either or both. Any person who knowingly violates any provision of  
66 this chapter, any regulation or order of the Board, any condition of a certificate or any order of a court  
67 issued as herein provided, or who knowingly makes any false statement in any form required to be  
68 submitted under this chapter or knowingly renders inaccurate any monitoring device or method required  
69 to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of  
70 not less than one year nor more than three years, or in the discretion of the jury or the court trying the  
71 case without a jury, confinement in jail for not more than twelve months and a fine of not less than  
72 \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon  
73 conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000.  
74 Each day of violation of each requirement shall constitute a separate offense.

75 (c) Any person who knowingly violates any provision of this chapter, and who knows at that time  
76 that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon  
77 conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor  
78 more than fifteen years and a fine of not more than \$250,000, either or both. A defendant that is not an  
79 individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not  
80 exceeding the greater of \$1,000,000 or an amount that is three times the economic benefit realized by  
81 the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both  
82 fine and imprisonment for any subsequent conviction of the same person under this subsection.

83 (d) Criminal prosecution under this section shall be commenced within three years of discovery of  
84 the offense, notwithstanding the limitations provided in any other statute.