

1996 RECONVENED SESSION

ENROLLED

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 62.1-44.34:8, 62.1-44.34:10 and 62.1-44.34:11 of the Code of Virginia, relating to ownership of underground storage tank exemption.

[H 591]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.34:8, 62.1-44.34:10 and 62.1-44.34:11 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.34:8. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" 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 (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"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 of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank for the storage, use, or dispensing of regulated substances; and

2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or

2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition and regulations promulgated under this article include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;

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3. Septic tanks;

4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this definition;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or waste water collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

§ 62.1-44.34:10. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" 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 (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"Fund" means the Virginia Petroleum Storage Tank Fund.

"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 of a facility" means any person who owns, operates, rents or otherwise exercises control over or responsibility for a facility.

"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum storage tank vendor" means a person who manufactures, sells, installs or services an underground petroleum storage tank, its connective piping and associated equipment.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or

2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees F and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor

fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil;

3. Septic tanks;

4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this definition;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or waste water collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

§ 62.1-44.34:11. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund is hereby established as a nonlapsing revolving fund to be used by the Board for (i) administering the state regulatory programs authorized by Articles 9, 10 and 11 (§ 62.1-44.34:8 et seq.) of this chapter, (ii) demonstrating financial responsibility, and (iii) other purposes as provided for by applicable provisions of state and federal law. All expenses, costs, civil penalties, charges and judgments recovered by or on behalf of the Board pursuant to Articles 9, 10 and 11 of this chapter, and all moneys received as reimbursement in accordance with applicable provisions of federal law and all fees collected pursuant to §§ 62.1-44.34:19.1 and 62.1-44.34:21, shall be deposited into the fund. Interest earned on the fund shall be credited to the fund. No moneys shall be credited to the balance in the fund until they have been received by the fund. The fund shall be established on the books of the Comptroller and any funds remaining in such fund at the end of the biennium shall not revert to the general fund but shall remain in the fund.

The fund shall be administered by the Board consistent with the provisions of Subtitle I of the federal Solid Waste Disposal Act (P.L. 98-616, § 9001 et seq.), any approved state underground storage tank program and in accordance with the following provisions:

1. The fund shall be maintained in a separate account. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the Governor or the General Assembly.

2. Disbursements from the fund may be made only for the following purposes:

a. Per occurrence costs incurred on or after December 22, 1989, in taking corrective action for any release of petroleum into the environment from an underground storage tank which are in excess of the per occurrence financial responsibility requirement imposed in § 62.1-44.34:12, up to one million dollars.

b. Per occurrence costs incurred in compensating third parties, including payment of judgments, for bodily injury and property damage caused by release of petroleum into the environment from an underground storage tank, up to one million dollars.

c. Per occurrence costs incurred by an operator whose net annual profits from all facilities do not exceed \$10,000,000 for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator with financial responsibility imposed pursuant to subsection D of § 62.1-44.34:16 in an amount less than \$200,000, per occurrence costs in excess of the required financial responsibility up to \$1,000,000; (ii) for an operator with financial responsibility imposed in subsection D of § 62.1-44.34:16 in an amount equal to or greater than \$200,000, per occurrence costs in excess of \$200,000 up to \$1,000,000; and (iii) for an operator exempt from financial responsibility requirements under § 62.1-44.34:17, per occurrence costs in excess of \$2,500 up to \$1,000,000. For purposes of this subdivision 2 c, the per occurrence financial responsibility requirement for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.

d. Per occurrence costs incurred by an operator whose net annual profits from all facilities exceed \$10,000,000 which are in excess of the greater of \$200,000 or the per occurrence financial responsibility requirement imposed in subsection D of § 62.1-44.34:16, up to \$1,000,000 for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13. Until regulations promulgated under subsection D of § 62.1-44.34:16 are effective, the maximum amount of financial responsibility authorized under that subsection shall be deemed the amount of financial responsibility imposed for purposes of this subsection.

e. Costs incurred in taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank or from underground storage tanks exempted in ~~clauses~~ *subdivisions* 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10, if such action is necessary, in the judgment of the Board, to protect human health and the environment.

f. Costs of corrective action up to one million dollars for any release of petroleum into the environment from underground storage tanks or from underground storage tanks exempted in *clauses subdivisions* 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 (i) whose owner or operator cannot be determined by the Board within ninety days; or (ii) whose owner or operator is incapable, in the judgment of the Board, of carrying out such corrective action properly.

g. Costs of corrective action incurred by the Board for any release of petroleum into the environment from underground storage tanks which are otherwise specifically listed in exemptions 1 through 9 of the definition of an underground storage tank in § 62.1-44.34:10.

h. Costs of corrective action incurred on or after December 22, 1989, by the owner or operator in excess of \$500 up to one million dollars for any release of petroleum into the environment from an underground storage tank exempted in *clauses subdivisions* 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

i. The "cost share" of corrective action with respect to any release of petroleum into the environment from underground storage tanks undertaken under a cooperative agreement with the Administrator of the United States Environmental Protection Agency, as determined by the Administrator of the United States Environmental Protection Agency in accordance with the provisions of § 9003 (h) (7) (B) of the United States Public Law 98-616 (as amended in 1986 by United States Public Law 99-662).

j. Administrative costs incurred by the Board in carrying out the provisions of regulatory programs authorized by Articles 9, 10, and 11 (§ 62.1-44.34:8 et seq.) of this chapter.

k. All costs and expenses, including but not limited to personnel, administrative, and equipment costs and expenses, directly incurred by the Board or by any other state agency, in and for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

l. Procurement, maintenance and replenishment of materials, equipment and supplies, in such quantities and at such locations as the Board may deem necessary, for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

m. Costs and expenses, incurred by the Board or by any other state agency, acting at the direction of the Board, for the protection, cleanup and rehabilitation of waterfowl, wildlife, shellfish beds and other natural resources, damaged or threatened by the discharge of oil, owned by the Commonwealth or held in trust by the Commonwealth for the benefit of its citizens.

n. Refund of cash deposits held in escrow pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title and reasonable interest thereon, and refunds of fees collected pursuant to § 62.1-44.34:21 as authorized by this chapter.

o. Administrative costs incurred by the Department of Motor Vehicles in the collection of fees specified in § 62.1-44.34:13.

p. Reasonable and necessary per occurrence costs for releases reported after December 22, 1989, in taking corrective action for any release of petroleum into the environment from an underground storage tank, which are in excess of \$5,000 up to \$1 million, by any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

3. No funds shall be paid for reimbursement of moneys expended for corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in *clauses subdivisions* 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

4. No funds shall be paid for reimbursement of moneys expended by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 prior to the effective date of regulations required pursuant to § 62.1-44.34:15.

5. No funds shall be paid for reimbursement of moneys expended for payment of interest or other finance charges on loans which were used for corrective action or containment and cleanup of a release by a person in subdivisions A 3 or A 4 of this section, except for an owner or operator which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code.

6. No funds shall be paid for penalties, charges or fines imposed pursuant to any applicable local, state or federal law.

7. No funds shall be paid for containment and cleanup costs that are reimbursed or are reimbursable from other applicable state or federal programs.

8. No funds shall be paid if the operator of the facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.

B. The Board shall seek recovery of moneys expended from the fund for corrective action under this

section where the owner or operator of an underground storage tank has violated substantive environmental protection rules and regulations pertaining to underground storage tanks which have been promulgated by the Board.

C. For costs incurred for corrective action as authorized in subdivision A 2 e of this section, the Board shall seek recovery of moneys from the owner or operator of an underground storage tank up to the minimum financial responsibility requirement imposed on the owner or operator in § 62.1-44.34:12, or seek recovery of such costs incurred from any available federal government funds.

D. For costs incurred for corrective action taken resulting from a release from underground storage tanks specified in subdivision A 2 f of this section, the Board shall seek recovery of moneys from the owner or operator up to the minimum financial responsibility requirement imposed on the owner or operator in § 62.1-44.34:12, or seek recovery of such costs incurred from any available federal government funds.

E. The Board shall seek recovery of moneys expended from the fund for costs incurred for corrective action as authorized in subdivision A 2 g of this section or seek recovery of such costs incurred from any available federal government funds. However, the Board shall not seek recovery of moneys expended from the fund for costs of corrective action in excess of \$500 from the owner or operator of an underground tank exempted in ~~clauses~~ *subdivisions* 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

F. The Board shall have the right of subrogation for moneys expended from the fund as compensation for personal injury, death or property damage against any person who is liable for such injury, death or damage.

G. The Board shall promptly initiate an action to recover all costs and expenses incurred by the Commonwealth for investigation, containment and cleanup of a discharge of oil or threat of discharge against any person liable for a discharge of oil as specified in Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title; provided that the Board shall seek recovery from an operator of expenditures from the fund only in the amount by which such expenditures exceed the amount authorized to be disbursed to the operator under subdivisions A 2 through A 8 of this section.