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HOUSE BILL NO. 716

Offered January 23, 1998

A BILL to amend and reenact §§ 62.1-44.34:14 and 62.1-44.34:18 of the Code of Virginia, relating to containment and cleanup of oil spills.

Patron—Parrish

Referred to Committee on Chesapeake and Its Tributaries

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.34:14 and 62.1-44.34:18 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 or the Natural Gas Pipeline Safety Act of 1968, as amended.

"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 deemed necessary in the judgment of the Board.

"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 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.

§ 62.1-44.34:18. Discharge of oil prohibited; liability for permitting discharge.

A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil 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 of oil into or upon state waters, lands, or storm drain systems, or from which there is a discharge of oil which 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, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this

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60 article or take such other action as may be *deemed necessary in the judgment of the Board* to contain
61 and clean up such discharge or threat of such discharge, ~~including any actions directed by any on scene~~
62 ~~coordinator acting pursuant to the Federal Water Pollution Control Act.~~ In the event of such discharge
63 or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the
64 person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the
65 Board may take such action as is necessary to contain and clean up the discharge or threat of discharge,
66 including the engagement of contractors or other competent persons. ~~The costs of such containment and~~
67 ~~cleanup shall be paid from the Underground Petroleum Storage Tank Fund or from any federal fund~~
68 ~~available for this purpose.~~

69 C. Any person discharging or causing or permitting a discharge of oil into or upon state waters,
70 lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a
71 discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems,
72 or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle
73 or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems
74 within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected
75 to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such
76 discharge, shall be liable to:

77 1. The Commonwealth of Virginia or any political subdivision thereof for all costs and expenses of
78 investigation, containment and cleanup incurred as a result of such discharge or threat of discharge,
79 including, but not limited to, reasonable personnel, administrative, and equipment costs and expenses
80 directly incurred by the Commonwealth or political subdivision, in and for preventing or alleviating
81 damage, loss, hardship, or harm to human health or the environment caused or threatened to be caused
82 by such discharge or threat of discharge;

83 2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of
84 the Commonwealth of Virginia or the political subdivision caused by such discharge;

85 3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other
86 revenues caused by such discharge, and compensation for the loss of any natural resources that cannot
87 be restocked, replenished or restored; and

88 4. Any person for injury or damage to person or property, real or personal, loss of income, loss of
89 the means of producing income, or loss of the use of the damaged property for recreational, commercial,
90 industrial, agricultural or other reasonable uses, caused by such discharge.

91 D. Notwithstanding any other provision of law, a person who renders assistance in containment and
92 cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under
93 this section for damages for personal injury and wrongful death caused by that person's negligence, and
94 for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for
95 any other damages or costs and expenses of containment and cleanup under this section that are caused
96 by the acts or omissions of such person in rendering such assistance; however, such liability provision
97 shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state
98 waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may
99 reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a
100 substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the
101 right of any person who renders such assistance to reimbursement for the costs of the containment and
102 cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as
103 amended, or any rights that person may have against any third party whose acts or omissions caused or
104 contributed to the prohibited discharge of oil or threat of such discharge. In addition, a person, other
105 than an operator, who voluntarily, without compensation, and upon the request of a governmental
106 agency, assists in the containment or cleanup of a discharge of oil, shall not be liable for any civil
107 damages resulting from any act or omission on his part in the course of his rendering such assistance in
108 good faith; nor shall any person or any organization exempt from income taxation under § 501 (c) (3) of
109 the Internal Revenue Code who notifies or assists in notifying the membership of such organization to
110 assist in the containment or cleanup of a discharge of oil, voluntarily, without compensation, and upon
111 the request of a government agency, be liable for any civil damages resulting from such notification
112 rendered in good faith.

113 E. In any action brought under this article, it shall not be necessary for the Commonwealth, political
114 subdivision or any person, to plead or prove negligence in any form or manner.

115 F. In any action brought under this article, the Commonwealth, political subdivision or any person, if
116 a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

117 G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that
118 the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of
119 a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the
120 foregoing; however, this subsection shall not apply to any action brought against (a) a person or
121 operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or

122 operator who failed or refused to cooperate fully in any containment and cleanup or who failed or
123 refused to effect containment and cleanup as required by subsection B of this section.

124 H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a
125 person or operator under this section for each discharge of oil or threat of such discharge shall not
126 exceed the amount of financial responsibility required under § 62.1-44.34:16 or \$10,000,000, whichever
127 is greater; however, there shall be no limit of liability imposed under this section: (a) if the discharge of
128 oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the
129 person or the operator discharging or causing or permitting discharge or threat of discharge or by an
130 agent, employee or contractor of such person or operator, or by the violation of any applicable safety,
131 construction or operation regulations by such person or operator or an agent, employee or contractor of
132 such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge
133 or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed
134 or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as
135 required by subsection B of this section.