

# VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

## CHAPTER 91

*An Act to amend and reenact § 62.1-44.34:16 of the Code of Virginia, relating to oil facility financial assurance.*

[H 1860]

Approved March 15, 1999

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

**1. That § 62.1-44.34:16 of the Code of Virginia is amended and reenacted as follows:**

§ 62.1-44.34:16. Financial responsibility for vessels and facilities.

A. The operator of any tank vessel entering upon state waters shall deposit with the Board cash or its equivalent in the amount of \$500 per gross ton of such vessel. Any such cash deposits received by the Board shall be held in escrow in the Virginia Petroleum Storage Tank Fund.

B. If the Board determines that oil has been discharged in violation of this article or that there has been a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under this chapter.

C. The Board shall exempt an operator of a tank vessel from the cash deposit requirements specified in this section if the operator of the tank vessel provides evidence of financial responsibility pursuant to the terms and conditions of this subsection. The Board shall adopt requirements for operators of tank vessels for maintaining evidence of financial responsibility in an amount equivalent to the cash deposit which would be required for such tank vessel pursuant to this section.

D. The Board is authorized to promulgate regulations requiring operators of facilities to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Operators of facilities shall demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth. Regulations governing the amount of any financial responsibility required shall take into consideration the type, oil storage or handling capacity and location of a facility, the risk of a discharge of oil at that type of facility in the Commonwealth, the potential damage or injury to state waters or the impairment of their beneficial use that may result from a discharge at that type of facility, the potential cost of containment and cleanup at that type of facility, and the nature and degree of injury or interference with general health, welfare and property that may result from a discharge at that type of facility. In no instance shall the financial responsibility requirements for facilities exceed five cents per gallon of aboveground storage capacity or five million dollars for a pipeline. In no instance shall any financial test of self-insurance require the operator of a facility to demonstrate more than one dollar of net worth for each dollar of required financial responsibility. If such net worth does not equal the required financial responsibility, then the operator shall demonstrate the minimum required amount by a combination of financial responsibility mechanisms in accordance with subsection E of this section. No governmental agency shall be required to comply with any such regulations.

E. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. To obtain an exemption from the cash deposit requirements under this section: the operator of a tank vessel and insurer, guarantor or surety shall appoint an agent for service of process in the Commonwealth; any insurer must be authorized by the Commonwealth to engage in the insurance business; and any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation of this chapter by the operator up to, but not exceeding, the amount insured, guaranteed or otherwise pledged. An operator of a tank vessel or facility whose financial responsibility is accepted by the Board under this subsection shall notify the Board at least thirty days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety. Operators of facilities who are unable to demonstrate financial responsibility in the amounts established pursuant to subsection D may establish an insurance pool pursuant to the requirements of § 62.1-44.34:12 in order to demonstrate such financial responsibility.

F. Acceptance of proof of financial responsibility for tank vessels shall expire:

1. One year from the date on which the Board exempts an operator from the cash deposit requirement based on evidence of self-insurance, except that the Board may establish by regulation a different expiration date for acceptance of evidence of self-insurance submitted by public agencies;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety;  
or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days

before the date of expiration.

G. Acceptance of proof of financial responsibility for facilities shall expire:

1. Upon expiration of registration under § ~~62.1-44.34:19.1~~.
2. Upon application for renewal of registration under § ~~62.1-44.34:19.1~~.

3. At any time a change in circumstances occurs which causes the operator to be unable to demonstrate or obtain evidence of financial responsibility under this section or under the requirements established by the Board pursuant to this section.

Evidence of financial responsibility shall be maintained in accordance with regulations adopted by the Board. Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration. *Operators of facilities shall annually demonstrate and maintain evidence of financial responsibility for containment and cleanup in accordance with regulations adopted by the Board.*

H. The Board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or
2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

I. It is not a defense to any action brought for failure to comply with the cash deposit requirement or to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the tank vessel or facility or the operator of the tank vessel or facility had made the required cash deposit or possessed evidence of financial responsibility accepted by the Board.