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HOUSE BILL NO. 1136

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 10.1-1186.1, 10.1-1429, and 10.1-1455 of the Code of Virginia, relating to hazardous waste sites; inventory; civil penalty.

Patron—Lopez

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1186.1, 10.1-1429, and 10.1-1455 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1186.1. Department to publish toxics inventory and hazardous waste site inventory.

A. For purposes of this section:

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), as amended.

"Facility" means the same as that term is defined in § 101 (9) of CERCLA.

"Hazardous substance" means the same as that term is defined in § 101 (14) of CERCLA.

"Nonfederally managed hazardous waste site" means any site in the Commonwealth where a past release has occurred or a release is occurring from a facility of oil or a reportable quantity of a hazardous substance.

"Oil" means the same as that term is defined in § 62.1-44.34:10.

"Past release" means a release that ceased more than three months prior to the date of discovery of the release.

"Release" means the same as that term is defined in § 101 (22) of CERCLA.

"Reportable amount" means the quantity listed as reportable for each hazardous substance in 40 C.F.R. Part 302.

B. The Department of Environmental Quality shall publish in March of each year the information reported by industries pursuant to 42 U.S.C. § 11023 in its document known as the "Virginia Toxic Release Inventory." The report shall be (i) organized by chemical, facility and facility location, and standard industrial classification code, and (ii) distributed to newspapers of general circulation and television and radio stations. The report shall include the information collected for the most recent calendar year for which data is available prior to the March publication date.

C. The Department shall publish by July 1, 2021, and update on an annual basis thereafter, a report known as the "Virginia Nonfederally Managed Hazardous Waste Site Inventory." Any nonfederally managed hazardous waste site of which the Department is aware shall be listed in the inventory if it (i) has been subject to disclosure or voluntary remediation pursuant to Chapter 12.1 (§ 10.1-1230 et seq.); (ii) stores, uses, manages, or disposes of a substance, or has stored, used, managed, or disposed of a substance, within the jurisdiction of the Waste Management Board (the Board), including a solid waste, hazardous waste, hazardous substance, or other substance; (iii) is a site where any person has been required or has volunteered to conduct a remedial action under an order or regulation of the Board; (iv) was reported to the Department's Pollution Response Program after December 31, 2017, and, in the judgment of the Director, poses a continuing risk to public health or the environment; (v) is listed on the U.S. Environmental Protection Agency's Superfund Enterprise Management System (SEMS) or an equivalent successor registry of the U.S. Environmental Protection Agency that tracks activities at sites under the CERCLA program or considered for inclusion in the CERCLA program; (vi) is a site where a release of oil has been reported to the Department pursuant to regulations adopted by the State Water Control Board; or (vii) was reported to the Department under § 10.1-1429.

The inventory shall not include any site (a) at which release of the hazardous substance or oil was permitted by law; (b) that has been listed on the federal National Priorities List, 40 C.F.R. Part 300, Appendix B; or (c) where fertilizer, pesticides, or herbicides have been applied to land or water in the ordinary course of business.

The report shall list the sites in the inventory in decreasing order of risk to public health and the environment. For each site, the report shall include, at a minimum, the name and address of the site; the name and address of the current owner; the date of release of hazardous substances, if known; the principal hazardous substances known or believed to be located at the site; the time period of remedial or corrective action; and any impediments to remedial or corrective action. The inventory shall be published on the Internet and distributed to newspapers of general circulation and television and radio

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59 stations.

60 D. The Board is authorized to identify, by regulation, other categories of nonfederally managed
61 hazardous waste sites to add to the inventory. If it identifies other categories, the Board shall specify the
62 date by which such new categories of sites should be added to the inventory and the date or dates of
63 release that will trigger inclusion of such sites on the inventory. The Board shall adopt regulations that
64 include a format and checklist for the submission of information relevant to nonfederally managed
65 hazardous waste sites.

66 **§ 10.1-1429. Notice of release of hazardous substance.**

67 A. For purposes of this section:

68 "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of
69 1980 (42 U.S.C. § 9601 et seq.), as amended.

70 "Facility" means the same as that term is defined in § 101 (9) of CERCLA.

71 "Hazardous substance" means the same as that term is defined in § 101 (14) of CERCLA.

72 "Nonfederally managed hazardous waste site" means any site in the Commonwealth where a past
73 release has occurred or a release is occurring from a facility of oil or a reportable quantity of a
74 hazardous substance.

75 "Oil" means the same as that term is defined in § 62.1-44.34:10.

76 "Past release" means a release that ceased more than three months prior to the date of discovery of
77 the release.

78 "Release" means the same as that term is defined in § 101 (22) of CERCLA.

79 "Reportable amount" means the quantity listed as reportable for each hazardous substance in 40
80 C.F.R. Part 302.

81 B. Any person owner, operator, or party responsible for the release of a nonfederally managed
82 hazardous waste site shall report an ongoing or current release of a hazardous substance from a fixed
83 facility which poses an immediate or imminent threat to public health and who is required by law to
84 notify the National Response Center shall notify or at such site to the Department, the Department of
85 Emergency Management, and the chief administrative officer or his designee of the local government of
86 the jurisdiction locality in which the release occurs and shall also notify the Department immediately
87 upon learning of the release. If such release is of oil, it shall be reported in accordance with
88 § 62.1-44.34:19. If such release is from an underground storage tank, it shall be reported in accordance
89 with applicable State Water Control Board technical standards and corrective action requirements for
90 the reporting and cleanup of spills and overfills.

91 C. Any person who finds evidence of a past release from or at a nonfederally managed hazardous
92 waste site in land, water, sediment, or a structure or storm drain shall, within 72 hours of learning of
93 the past release, report to the Director all site information that is known or readily available to him.
94 Such reporting requirement shall not apply to any site (i) on which a release of a hazardous substance
95 or oil was permitted by law; (ii) that has been listed on the federal National Priorities List, 40 C.F.R.
96 Part 300, Appendix B; (iii) where fertilizer, pesticides, or herbicides have been applied to land or water
97 in the ordinary course of business; (iv) that is listed on the Superfund Enterprise Management System
98 (SEMS) of the U.S. Environmental Protection Agency (EPA) or an equivalent successor registry of the
99 EPA that tracks activities at sites included in the CERCLA program or considered for inclusion in the
100 CERCLA program; or (v) that is listed on the inventory prepared by the Department pursuant to §
101 10.1-1186.1.

102 **§ 10.1-1455. Penalties and enforcement.**

103 A. Any person who violates any provision of this chapter, any condition of a permit or certification,
104 or any regulation or order of the Board shall, upon such finding by an appropriate circuit court, be
105 assessed a civil penalty of not more than \$32,500 for each day of such violation. However, any person
106 who violates the reporting requirement in subsection C of § 10.1-1429 shall be assessed a civil penalty
107 of not more than \$5,000 for each day of such violation. All civil penalties under this section shall be
108 recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such
109 civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia
110 Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

111 B. In addition to the penalties provided above, any person who knowingly transports any hazardous
112 waste to an unpermitted facility; who knowingly transports, treats, stores, or disposes of hazardous waste
113 without a permit or in violation of a permit; or who knowingly makes any false statement or
114 representation in any application, disclosure statement, label, manifest, record, report, permit, or other
115 document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty
116 of a felony punishable by a term of imprisonment of not less than one year nor more than five years
117 and a fine of not more than \$32,500 for each violation, either or both. The provisions of this subsection
118 shall be deemed to constitute a lesser included offense of the violation set forth under subsection I.

119 Each day of violation of each requirement shall constitute a separate offense.

120 C. The Board is authorized to issue orders to require any person to comply with the provisions of

any law administered by the Board, the Director or the Department, any condition of a permit or certification, or any regulations promulgated by the Board or to comply with any case decision, as defined in § 2.2-4001, of the Board or Director. Any such order shall be issued only after a hearing in accordance with § 2.2-4020 with at least 30 days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the Board to issue separate orders and regulations to meet any emergency as provided in § 10.1-1402.

D. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or the Director, any condition of a permit or certification or any provision of this chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or the Director, any condition of a permit or certification or any provision of this chapter may be compelled in a proceeding instituted in an appropriate court by the Board or the Director to obey such regulation, permit, certification, order or provision of this chapter and to comply therewith by injunction, mandamus, or other appropriate remedy.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$32,500 for each violation. 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 this title. Each day of violation of each requirement shall constitute a separate offense. 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 to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the 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 this title.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or the Director, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section. Such civil charges 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 this title.

G. In addition to all other available remedies, the Board may issue administrative orders for the violation of (i) any law or regulation administered by the Board; (ii) any condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of the Board. Issuance of an administrative order shall be a case decision as defined in § 2.2-4001 and shall be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020. Orders issued pursuant to this subsection may include civil penalties of up to \$32,500 per violation not to exceed \$100,000 per order, and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. The Board may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with this subsection. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Orders issued pursuant to this subsection shall become effective five days after having been delivered to the affected persons or mailed by certified mail to the

182 last known address of such persons. Should the Board find that any person is adversely affecting the
183 public health, safety or welfare, or the environment, the Board shall, after a reasonable attempt to give
184 notice, issue, without a hearing, an emergency administrative order directing the person to cease the
185 activity immediately and undertake any needed corrective action, and shall within 10 days hold a
186 hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend
187 or cancel the emergency administrative order. If the Board finds that a person who has been issued an
188 administrative order or an emergency administrative order is not complying with the order's terms, the
189 Board may utilize the enforcement and penalty provisions of this article to secure compliance.

190 H. In addition to all other available remedies, the Department and generators of recycling residues
191 shall have standing to seek enforcement by injunction of conditions which are specified by applicants in
192 order to receive the priority treatment of their permit applications pursuant to § 10.1-1408.1.

193 I. Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste
194 in violation of this chapter or in violation of the regulations promulgated by the Board and who knows
195 at the time that he thereby places another person in imminent danger of death or serious bodily injury,
196 shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two
197 years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is
198 not an individual shall, upon conviction of violating this section, be subject to a fine not exceeding the
199 greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as
200 a result of the offense. The maximum penalty shall be doubled with respect to both fine and
201 imprisonment for any subsequent conviction of the same person.

202 J. Criminal prosecutions under this chapter shall be commenced within three years after discovery of
203 the offense, notwithstanding the provisions of any other statute.

204 K. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action
205 brought by the Board under this section in which it substantially prevails on the merits of the case,
206 unless special circumstances would make an award unjust.

207 L. The Board shall develop and provide an opportunity for public comment on guidelines and
208 procedures that contain specific criteria for calculating the appropriate penalty for each violation based
209 upon the severity of the violations, the extent of any potential or actual environmental harm, the
210 compliance history of the facility or person, any economic benefit realized from the noncompliance, and
211 the ability of the person to pay the penalty.