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HOUSE BILL NO. 2209

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact § 10.1-2500 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 20 of Title 62.1 a section numbered 62.1-196.1, relating to high polycyclic aromatic hydrocarbon pavement sealants; prohibition; civil penalty.

Patrons—Tran and Carr

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 10.1-2500 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 20 of Title 62.1 a section numbered 62.1-196.1 as follows:

§ 10.1-2500. Virginia Environmental Emergency Response Fund established.

A. There is hereby established the Virginia Environmental Emergency Response Fund, hereafter referred to as the Fund, to be used (i) for the purpose of emergency response to environmental pollution incidents and for the development and implementation of corrective actions for pollution incidents, other than pollution incidents addressed through the Virginia Underground Petroleum Storage Tank Fund, as described in § 62.1-44.34:11 of the State Water Control Law; (ii) to conduct assessments of potential sources of toxic contamination in accordance with the policy developed pursuant to § 62.1-44.19:10; and (iii) to assist small businesses for the purposes described in § 10.1-1197.3.

B. The Fund shall be a nonlapsing revolving fund consisting of grants, general funds, and other such moneys as appropriated by the General Assembly, and moneys received by the State Treasurer for:

1. Noncompliance penalties assessed pursuant to § 10.1-1311, civil penalties assessed pursuant to subsection B of § 10.1-1316, and civil charges assessed pursuant to subsection C of § 10.1-1316.

2. Civil penalties assessed pursuant to subsection C of § 10.1-1418.1, civil penalties assessed pursuant to subsections A and E of § 10.1-1455, and civil charges assessed pursuant to subsection F of § 10.1-1455.

3. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Civil charges assessed pursuant to subdivision 8d of § 62.1-44.15 and civil penalties assessed pursuant to subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.), 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.

3. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Civil charges assessed pursuant to subdivision (8d) of § 62.1-44.15 and civil penalties assessed pursuant to subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 2.3 (§ 62.1-44.15:24 et seq.), 2.4 (§ 62.1-44.15:51 et seq.), 2.5 (§ 62.1-44.15:67 et seq.), 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.

4. Civil penalties assessed pursuant to subsection D of § 62.1-196.1 and civil penalties and civil charges assessed pursuant to § 62.1-270.

5. Civil penalties assessed pursuant to subsection A of § 62.1-252 and civil charges assessed pursuant to subsection B of § 62.1-252.

6. Civil penalties assessed in conjunction with special orders by the Director pursuant to § 10.1-1186 and by the Waste Management Board pursuant to subsection G of § 10.1-1455.

§ 62.1-196.1. Prohibiting high-PAH pavement sealants; civil penalty.

A. For the purposes of this section:

"High-PAH pavement sealant" means a sealant product intended for application on asphalt pavement surfaces, including driveways and parking lots, containing levels of polycyclic aromatic hydrocarbons in excess of one percent by weight.

"Polycyclic aromatic hydrocarbons" or "PAH" means a group of compounds that are byproducts of incomplete combustion, that include several carcinogens, and that are designated as hazardous substances pursuant to subsection 9602(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.).

B. Any locality may by ordinance prohibit any person from selling or distributing at retail or offering for retail sale or distribution a high-PAH pavement sealant in the Commonwealth on or after July 1, 2023. This subsection shall not restrict the continued sale of such a product by a retailer of any

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59 existing inventory in stock on July 1, 2023.

60 C. A locality may by ordinance prohibit the application or use of a high-PAH pavement sealant in
61 the Commonwealth on or after July 1, 2024.

62 D. In adopting an ordinance pursuant to this section, the locality may provide that any person who
63 violates any provision of this section is subject to a civil penalty of \$250, to be paid into the state
64 treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response
65 Fund established in § 10.1-2500.