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HOUSE BILL NO. 1085

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 7, 2024)

(Patrons Prior to Substitute—Delegates Rasoul and Bulova [HB 245])

A BILL to amend the Code of Virginia by adding in Chapter 3.1 of Title 62.1 an article numbered 13, consisting of sections numbered 62.1-44.34:29 through 62.1-44.34:33, relating to Department of Environmental Quality; PFAS; identification; monitoring; PFAS Expert Advisory Council established; report.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 3.1 of Title 62.1 an article numbered 13, consisting of sections numbered 62.1-44.34:29 through 62.1-44.34:33, as follows:

Article 13.

Per- and Polyfluoroalkyl Substances.

§ 62.1-44.34:29. Definitions.

As used in this article, unless the context requires a different meaning:

"Committee" means the PFAS Expert Advisory Committee established in § 62.1-44.34:33.

"EPA" means the U.S. Environmental Protection Agency.

"HFPO-DA" means hexafluoropropylene oxide dimer acid.

"PFAS" means per- and polyfluoroalkyl substances, which are any fluorinated substances that contain at least one fully fluorinated methyl or methylene carbon atom and any precursors of such substances. "PFAS" includes HFPO-DA, PFBS, PFHxS, PFNA, PFOA, and PFOS.

"PFAS maximum contaminant level" or "PFAS MCL" means any maximum contaminant level for any PFAS chemical or mixture of PFAS chemicals (i) established by the EPA as a national primary drinking water regulation or (ii) for the interim period of time between the EPA's proposal and final agency action for adopting a national primary drinking water regulation, the EPA's proposed level, provided that the EPA's proposed level may be used only for nonregulatory purposes of self-reporting of manufacturing or use, monitoring, and PFAS assessments as provided in this article.

"PFBS" means perfluorobutane sulfonate.

"PFHxS" means perfluorohexane sulfonate.

"PFNA" means perfluorononanoic acid.

"PFOA" means perfluorooctanoic acid.

"PFOS" means perfluorooctane sulfonate.

"Public water system" means a system that provides piped water for human consumption and (i) serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents or (ii) regularly serves at least 25 of the same persons over six months of the year.

"VDH" means the Virginia Department of Health.

"VPDES" means the Virginia Pollutant Discharge Elimination System.

§ 62.1-44.34:30. PFAS assessments for identification of sources of PFAS in public water supplies.

A. For every public water system, VDH shall assist the Department by on a quarterly basis transferring to the Department all validated monitoring results available to VDH under federal regulations or otherwise in VDH's possession that indicate PFAS MCL exceedances, including data generated by VDH's independent PFAS monitoring activities or submitted by public water systems to VDH.

B. For every public water system for which VDH has notified the Department pursuant to subsection A or the public water system has directly demonstrated to the Department that PFAS in finished water has been detected above any PFAS MCL using Method 533, Method 537.1, or other EPA-approved method for drinking water, the Department shall develop and implement a plan to prioritize and conduct PFAS assessments for identifying significant sources of PFAS in such public water system's raw water source or sources. Such prioritization plan shall be developed within six months of the initial notification by VDH pursuant to subsection A and updated annually thereafter.

C. In developing its prioritization for conducting PFAS assessments, the Department shall consider (i) data and other information available from VDH regarding public water supplies, including but not limited to applicable PFAS data; (ii) any data or other information submitted directly to the Department by public water systems on a voluntary basis; (iii) information from consultation with VDH and public water systems with finished water monitoring results above any PFAS MCL; and (iv) other data or information the Department considers useful for setting priorities, including studies published in the scientific literature.

D. In conducting PFAS assessments, the Department shall consider the results of the self-reporting

60 process required pursuant to § 62.1-44.34:31, the results of any effluent or instream monitoring required
61 pursuant to § 62.1-44.34:32 or otherwise conducted by or available to the Department, and other
62 PFAS-related data or information the Department deems useful for identifying significant sources.

63 E. In its reports of PFAS assessments, the Department shall identify potential regulatory and
64 nonregulatory options for addressing each significant source of PFAS. The goal of such assessments
65 shall be to protect public health by reducing significant sources of PFAS in raw water sources of public
66 water systems and to ensure, to the maximum extent practicable, that the costs of public water systems
67 are minimized.

68 **§ 62.1-44.34:31. Self-reporting of PFAS manufacture and use for PFAS assessment.**

69 A. For purposes of a PFAS assessment following notification to the Department pursuant to
70 subsection B of § 62.1-44.34:30, the Department shall require any facility, if deemed by the Department
71 to be a potential source of PFAS in the public water system's raw water source, that discharges to a
72 surface water under a VPDES permit or that discharges to a publicly owned treatment works under an
73 industrial pretreatment program permit to report to the Department, within 90 days after being directed
74 by the Department, its manufacture or use of PFAS as provided in this section on a form provided by
75 the Department. Such report shall include the chemical name and the Chemical Abstracts Service (CAS)
76 number, if known or reasonably ascertainable, the amount manufactured or used in the preceding 12
77 months, and any additional information reasonably required by the Department to ascertain sources and
78 quantities of PFAS manufactured or used.

79 B. For every facility that reports the use or manufacture of one or more PFAS in accordance with
80 subsection A and that discharges to a publicly owned treatment works, the Department shall forward the
81 information provided by the facility to such publicly owned treatment works within 30 days of receipt.
82 Such reporting requirement shall not change the duty or discharge permits of a publicly owned
83 treatment works.

84 C. Any portion of a report submitted to the Department pursuant to this section may be claimed as
85 confidential by the submitter pursuant to § 62.1-44.21, except claims of confidentiality for the name,
86 address, and location of the facility. Any such claim must be asserted at the time of submission in the
87 manner prescribed on the reporting form or instructions. If no claim is made at the time of submission,
88 the Department may make the information available to the public without further notice. If a claim is
89 asserted, the information will be treated in accordance with the procedures in § 62.1-44.21.

90 D. For purposes of this section, use of PFAS (i) means intentional use of PFAS or PFAS-containing
91 substances as a product ingredient or as a production process aid or additive, such as wetting agents,
92 fume suppressants, photoresists, etchants, cleaners, coatings, surfactants, or flame retardants, and (ii)
93 does not mean use of manufacturing equipment that contains PFAS.

94 **§ 62.1-44.34:32. Monitoring of PFAS sources for PFAS assessments.**

95 A. For the purpose of PFAS assessments required pursuant to § 62.1-44.34:30, the Department shall
96 require, after three months' advance notice, the owner or operator of any of the following facilities, if
97 deemed by the Department to be a potentially significant source of PFAS in the public water system's
98 raw water source, to perform and promptly report the results as received of representative quarterly
99 discharge monitoring for an initial characterization period of one year, provided, however, that the
100 Department may discontinue remaining quarterly monitoring by a facility with proper monitoring results
101 that are below the method detection level for the first two quarters:

102 1. Any facility subject to self-reporting pursuant to § 62.1-44.34:31;

103 2. Any facility manufacturing PFAS, any electroplating or metal finishing facility using PFAS, any
104 semiconductor or circuit board facility using PFAS, any paper or packaging manufacturing facility using
105 PFAS, and any textile mills, tanneries, or leather, fabric, or carpet treaters using PFAS;

106 3. Any other facility that the Department has a reasonable basis to believe may use or manufacture
107 PFAS based on the facility or activity type;

108 4. Any centralized waste treatment industrial facility;

109 5. Any industrial launderers defined by NAICS 812332;

110 6. Any facility discharging groundwater remediation wastewaters pursuant to the VPDES General
111 Permit Regulation for Discharges from Groundwater Remediation of Contaminated Sites, Dewatering
112 Activities of Contaminated Sites, and Hydrostatic Tests; and

113 7. Any airport, air base, air station, fire training facility, landfill, or other facility or site that the
114 Department has a reasonable basis to believe has significant soil or groundwater PFAS contamination
115 significantly impacting finished water levels.

116 B. For purposes of this section, using or use of PFAS (i) means intentionally using or use of PFAS
117 or PFAS-containing substances as a product ingredient or as a production process aid or additive, such
118 as wetting agents, fume suppressants, photoresists, etchants, cleaners, coatings, surfactants, or flame
119 retardants, and (ii) does not mean using or use of manufacturing equipment that contains PFAS.

120 C. For purposes of monitoring under subsection A, the applicable laboratory test method is Method
121 1633 or such other method approved by the EPA that may be allowed by the Department. Monitoring

reports shall include all PFAS analytes measured by the test method. For purposes of this section, the Department shall not require, and the facility and its laboratory shall be exempt from, environmental laboratory certification or accreditation requirements specifically for use of Method 1633.

§ 62.1-44.34:33. PFAS Expert Advisory Committee; report.

A. The Department, in consultation with VDH, shall establish the PFAS Expert Advisory Committee to assist the Department and VDH in identifying (i) PFAS sources through PFAS assessments and associated monitoring and reporting, (ii) public and private lab testing capacity issues, and (iii) options for reducing PFAS in source waters causing exceedances of PFAS MCLs.

B. Members of the Committee shall be appointed by the Director and shall include representatives of public drinking water and wastewater system owners, representatives of public health organizations, potential PFAS source categories, and conservation organizations with expertise in water treatment, water science, or PFAS chemistry, and other experts as determined by the Department. Members of the Committee shall receive no compensation for their service and shall not be entitled to reimbursement for expenses incurred in the performance of their duties.

C. The Department shall convene the Committee at least two times per calendar year through June 30, 2027, and thereafter as the Department deems appropriate.

D. The Department shall report annually by October 1 on its activities related to PFAS assessments, including the self-reporting process pursuant to § 62.1-44.34:31 and the discharge monitoring process pursuant to § 62.1-44.34:32, and on the activities of the Committee to the Governor and the General Assembly.

2. That this act shall not be construed as limiting the authority of the Department of Environmental Quality, the Virginia Department of Health, or the owner or operator of any publicly owned treatment works to which any user discharges wastewater to require monitoring or reporting or otherwise regulate the discharge of any PFAS chemicals or other pollutants under other applicable legal authority.

3. That for public water systems for which the Department of Environmental Quality has received notice on or before September 1, 2024, of PFAS detected above the threshold established in subsection B of § 62.1-44.34:30 of the Code of Virginia, as created by this act, the Department shall issue notice to applicable facilities by December 1, 2024, of required self-reporting under § 62.1-44.34:31 of the Code of Virginia, as created by this act, and required monitoring under § 62.1-44.34:32 of the Code of Virginia, as created by this act.