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**HOUSE BILL NO. 949**

Offered January 10, 2024

Prefiled January 9, 2024

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 62.1-44.34:36, relating to aboveground storage tanks; Hazardous Substance Aboveground Storage Tank Fund; civil penalties.*

Patrons—Lopez and Simonds

Referred to Committee on Agriculture, Chesapeake and Natural Resources

**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 62.1-44.34:36, as follows:**

*Article 13.**Hazardous Substance Aboveground Storage Tanks.***§ 62.1-44.34:29. Definitions.**

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

*"Aboveground storage tank" means a tank or a series of interconnected tanks and its associated pipes that has a total storage capacity of 1,320 gallons or more, excluding its associated pipes, that is used to store a liquid hazardous substance at standard temperature and pressure, and the volume of which, including the volume of the pipes, is more than 90 percent above the surface of the ground or the floor of an underground area. "Aboveground storage tank" does not include (i) a tank used to contain oil; (ii) a line pipe and breakout tank of an interstate pipeline regulated under the federal Hazardous Liquid Pipeline Safety Act of 1979 or the federal Natural Gas Pipeline Safety Act of 1968, as amended; (iii) a liquid trap, atmospheric or pressure vessel, or associated gathering lines related to oil or gas production and gathering operations; (iv) a shipping container or other mobile tank that is subject to state or federal laws or regulations governing the transportation of hazardous materials, including a railroad freight car that is subject to federal regulation; (v) a barge or boat subject to federal regulation under the U.S. Coast Guard or U.S. Department of Homeland Security, including federal regulations promulgated under 33 C.F.R. Chapter I, or subject to other federal law governing the transportation of hazardous materials; (vi) a swimming pool; (vii) a device containing surface water, groundwater, demineralized water, noncontact cooling water, drinking water for human or animal consumption, or water stored for fire or emergency purposes; (viii) a device containing food or food-grade materials used for human or animal consumption and regulated under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.); (ix) a device holding wastewater that is being actively treated or processed, including a clarifier, chlorine contact chamber, or batch reactor; (x) a tank that is empty and is held in inventory or offered for sale; (xi) a piece of electrical equipment, such as a transformer, circuit breaker, or voltage regulator transformer; (xii) a device holding reclaimed water; (xiii) a tank subject to the Virginia Gas and Oil Act (§ 45.2-1600 et seq.); or a tank located on a farm, the contents of which are used exclusively for agricultural purposes.*

*"Director" means the Director of the Department of Environmental Quality.*

*"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.*

*"Extremely hazardous substance" means any substance that is liquid at standard temperature and pressure and is listed as an Extremely Hazardous Substance in 40 C.F.R. Part 355.*

*"Facility" means any development, building, structure, or installation within the Commonwealth that includes an aboveground storage tank.*

*"Hazardous substance" means (i) any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; (ii) any substance defined in § 311(b) of the Federal Water Pollution Control Act of 1972 or listed in 40 C.F.R. Part 116; and (iii) any extremely hazardous substance. "Hazardous substance" does not include oil.*

*"Hazardous Substance Aboveground Storage Tank Fund" or "the Fund" means the fund created pursuant to § 62.1-44.34:35.*

*"Oil" means oil of any kind and in any form, including petroleum and any petroleum by-product, fuel oil, lubricating oil, sludge, oil refuse, oil mixed with other wastes, crude oil, and any other liquid hydrocarbon regardless of specific gravity.*

*"Operator" means any person who owns, operates, rents, or otherwise exercises control over or responsibility for an aboveground storage tank or facility.*

*"Person" means any individual, two or more individuals, firm, corporation, association, partnership,*

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59 or governmental unit or agency thereof.

60 "Tank" means a device that is designed to contain an accumulation of a hazardous substance and is  
61 constructed of nonearthen materials that provide structural support, such as concrete, steel, or plastic.  
62 "Tank" includes such a device whether it is located indoors or outdoors and whether it is fully enclosed  
63 or partially enclosed. "Tank" does not include a flow-through process tank as defined in 40 C.F.R. Part  
64 280.

65 "Underground area" means an underground room, including a basement or cellar, that provides  
66 enough space for the physical inspection of the exterior of any tank situated on or above the surface of  
67 the floor of such room.

68 **§ 62.1-44.34:30. Powers and duties of Board regarding aboveground storage tanks.**

69 The Board shall carry out the provisions of this article and compatible provisions of federal acts and  
70 shall:

71 1. Provide technical assistance and advice concerning all aspects of aboveground storage tank  
72 management;

73 2. Collect data and information necessary to conduct the state aboveground storage tank program;

74 3. Apply for federal funds that become available under federal acts and transmit such funds to  
75 appropriate persons;

76 4. Adopt regulations for aboveground storage tanks registration requirements, registration fees,  
77 registration renewal requirements and fees, and recordkeeping requirements; and

78 5. Provide guidance to the Director on the contents of the report required under subsection H of  
79 § 62.1-44.34:31.

80 **§ 62.1-44.34:31. Registration of aboveground storage tanks.**

81 A. The operator of any aboveground storage tank shall register such tank with the Director in  
82 accordance with this section. The registration for each aboveground storage tank shall require the  
83 operator to provide the following information:

84 1. Information about the operator of the aboveground storage tank, including the operator's name  
85 and address and information about the operator's contact person;

86 2. Information about the owner of the aboveground storage tank, including the owner's name and  
87 address and information about the owner's contact person;

88 3. Information about the facility at which the aboveground storage tank is located, including its  
89 name and address, information about any on-site contact person, and the number of aboveground  
90 storage tanks at the same facility;

91 4. The date of installation of the aboveground storage tank;

92 5. The capacity of the aboveground storage tank in gallons;

93 6. The current status of the aboveground storage tank, whether in service or out of service;

94 7. The manufacturer and model number of the aboveground storage tank, if known;

95 8. The current contents of the aboveground storage tank;

96 9. The predominant contents of the aboveground storage tank. For purposes of this section,  
97 "predominant contents" means the hazardous substance that was in the aboveground storage tank for  
98 the longest duration during the 12-month period preceding the registration or renewal;

99 10. The material of which the aboveground storage tank is constructed, including concrete, steel,  
100 plastic, fiberglass, or another material;

101 11. The material of which any release prevention barrier for the aboveground storage tank is  
102 constructed, including concrete, steel, plastic, fiberglass, or another material;

103 12. The type of cathodic protection provided for the aboveground storage tank, if any;

104 13. The type of overfill protection provided for the aboveground storage tank, if any;

105 14. The type of leak detection system provided for the aboveground storage tank, if any, including  
106 visual monitoring, an in-tank gauging system, interstitial monitoring, soil vapor monitoring, or another  
107 system;

108 15. The type of secondary containment provided for the aboveground storage tank, if any; and

109 16. The date of the last inspection of the aboveground storage tank, description of any maintenance  
110 of the aboveground storage tank undertaken in response to the inspection, and the name of any industry  
111 standard pursuant to which the inspection was undertaken.

112 The registration shall be signed by an authorized representative of the operator, who shall certify on  
113 the registration: "I certify under penalty of perjury that I have personally examined and am familiar  
114 with the information submitted in this registration and that I believe that the submitted information is  
115 true, accurate, and complete."

116 B. The Director may prepare an appropriate registration form or online submission system upon  
117 which an operator can provide the information required in this section. An operator shall be able to  
118 register multiple aboveground storage tanks located at a single street address using a single form or  
119 submission.

120 C. Each registration shall be accompanied by a registration fee, payable to the State Treasurer and

creditable to the Hazardous Substance Aboveground Storage Tank Fund established pursuant to § 62.1-44.34:35, as follows: (i) \$50 for any aboveground storage tank with a capacity of at least 1,320 gallons but less than 5,000 gallons; (ii) \$150 for any aboveground storage tank with a capacity of at least 1,000 gallons but less than 5,000 gallons; and (iii) \$600 for any aboveground storage tank with a capacity of 25,000 gallons or more. No political subdivision of the Commonwealth shall charge a fee in connection with the registration of any aboveground storage tank under this article. Such fees shall be valid for aboveground storage tanks registered prior to January 1, 2028. The Board may adjust any fees described in this subsection for any aboveground storage tanks registered on or after January 1, 2028.

D. For aboveground storage tanks installed on or after January 1, 2025, but before the effective date of regulations adopted pursuant to subsection F, an operator shall submit a registration to the Director pursuant to subsection A, along with the appropriate registration fee, within 30 days of installation of the aboveground storage tank.

E. If after an initial aboveground storage tank registration, title to an aboveground storage tank changes, the operator shall submit a registration renewal to the Director within 30 days after the title change. Such registration renewal shall include the information required in subsection A and shall be accompanied by the appropriate registration fee pursuant to subsection C.

F. The Board shall adopt regulations regarding registration requirements, registration fees, registration renewal requirements and fees, and recordkeeping requirements. Such regulations may require operators to submit any additional information different from that listed in subsection A.

G. 1. The Director shall compile an inventory of aboveground storage tanks in the Commonwealth based upon the registrations received. Except as provided in subdivision 2, the inventory shall be publicly available through print and electronic means, shall be searchable electronically, and shall be updated at least annually thereafter, or upon adoption of a different schedule as specified by the Board through regulation. The Director shall produce a report summarizing in tabular and graphical form the data collected in such inventory by September 1, 2026, and biennially thereafter.

2. Notwithstanding the requirements of subdivision 1, the Director may withhold information about an individual aboveground storage tank from the publicly available inventory if the information is exempt from public disclosure pursuant to an exemption set forth in the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**§ 62.1-44.34:32. Access to aboveground storage tanks.**

A. Any operator of an aboveground storage tank shall, upon request of the Director or his designee, (i) furnish information relating to such tank and any associated equipment and contents; (ii) conduct reasonable monitoring or testing; (iii) permit the Director, at all reasonable times, to inspect and copy records relating to such tank; and (iv) permit the Director to access any aboveground storage tank for containment and cleanup.

B. The Director or his designee may (i) enter any facility or other place where an aboveground storage tank is located at any time; (ii) inspect and obtain samples of any fluid contained in an aboveground storage tank; (iii) conduct monitoring and testing of any aboveground storage tank, associated equipment, or contents or surrounding soils, surface water, or groundwater; and (iv) undertake containment and cleanup pertaining to a discharge or a substantial threat of a discharge as provided in this article.

**§ 62.1-44.34:33. Discharge prohibited; aboveground storage tank safety.**

The discharge of a hazardous substance from an aboveground storage tank into or upon any land, storm drain system, or state waters is prohibited.

**§ 62.1-44.34:34. Reporting of discharge.**

Any person discharging or causing or permitting a discharge from an aboveground storage tank of a hazardous substance that (i) enters into or upon any land, storm drain system, or state waters within the Commonwealth or (ii) reasonably may be expected to enter such waters, land, or drain system, and any operator of an aboveground storage tank from which there is such a discharge shall, immediately upon learning of the discharge, notify the following of such discharge: (a) the Director; (b) the local director or coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge occurs; (c) the local director or coordinator of emergency services appointed pursuant to § 44-146.19 for any other political subdivision reasonably expected to be affected by the discharge; and (d) appropriate federal or state authorities.

**§ 62.1-44.34:35. Hazardous Substance Aboveground Storage Tank Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Hazardous Substance Aboveground Storage Tank Fund. The Fund shall be established on the books of the Comptroller. All moneys received by or on behalf of the Board pursuant to this article or any regulation adopted thereunder, except moneys received pursuant to § 62.1-44.34:36 or a regulation directing that moneys received be paid into the state treasury and credited to the Virginia Environmental Emergency Response Fund established pursuant to § 10.1-2500, shall be paid into the

182 state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the  
183 Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of  
184 each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund  
185 shall be used solely for the purposes of administering the state programs authorized by this article and  
186 shall not be used for corrective action or containment and cleanup. Expenditures and disbursements  
187 from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written  
188 request signed by the Director or his designee.

189 **§ 62.1-44.34:36. Enforcement; civil penalties.**

190 A. In the event of a (i) violation of any provision of this article, regulation, administrative or judicial  
191 order, or term or condition of approval issued under this article or (ii) failure to comply with a special  
192 order issued by the Board pursuant to this section, the Board is authorized to proceed by civil action to  
193 obtain an injunction of such violation, to obtain any affirmative equitable relief that is appropriate, and  
194 to recover all costs, damages, and civil penalties resulting from such violation or failure to comply. The  
195 Board shall be entitled to an award of reasonable attorney fees and costs in any action in which it is a  
196 prevailing party.

197 B. Any person who fails to register an aboveground storage tank in accordance with §  
198 62.1-44.34:31 is subject to a civil penalty of not less than \$1,000 nor more than \$10,000 for the initial  
199 violation, and \$1,000 per day for each day of such violation thereafter. Any person who fails to report a  
200 discharge as required by § 62.1-44.34:34 is subject to a civil penalty of not less than \$1,000 nor more  
201 than \$50,000 for the initial violation, and \$10,000 for each day of such violation thereafter.

202 C. Civil penalties may be assessed under this article either (i) by a court in an action brought by the  
203 Board pursuant to this section, as specified in § 62.1-44.15, or (ii) with the consent of the person  
204 charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and  
205 deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund established  
206 pursuant to § 10.1-2500.

207 In determining the amount of any penalty, consideration shall be given to: (a) the amount of the  
208 hazardous substance stored or discharged; (b) the characteristics of the hazardous substance; (c) the  
209 willfulness of the violation; (d) any history of noncompliance; (e) the actions of the person in reporting,  
210 containing, and cleaning up any discharge or threat of discharge; (f) the damage or injury to state  
211 waters or the impairment of their beneficial use; (g) the cost of containment and cleanup; (h) the nature  
212 and degree of injury to or interference with general health, welfare, and property; and (i) and the  
213 available technology for preventing, containing, reducing, or eliminating the discharge.

214 **2. That any aboveground storage tank that exists prior to the effective date of this act shall be**  
215 **registered pursuant to § 62.1-44.34:31 of the Code of Virginia, as created by this act, no later than**  
216 **January 1, 2025.**

217 **3. That the State Water Control Board shall adopt regulations regarding requirements for**  
218 **aboveground storage tank (i) registration, (ii) fees, (iii) registration renewal, and (iv) recordkeeping**  
219 **pursuant to § 62.1-44.34:31 of the Code of Virginia, as created by this act, no later than**  
220 **September 1, 2025.**

221 **4. That the Director of the Department of Environmental Quality shall compile an inventory of**  
222 **aboveground storage tanks in the Commonwealth in accordance with the provisions of subdivision**  
223 **G 1 of § 62.1-44.34:31 of the Code of Virginia, as created by this act.**