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HOUSE BILL NO. 1167

Offered January 22, 1996

A BILL to amend and reenact §§ 62.1-44.34:8 through 62.1-44.34:12 and § 62.1-44.34:15.1 of the Code of Virginia, relating to petroleum storage tanks.

Patron—Parrish

Referred to Committee on Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.34:8 through 62.1-44.34:12 and § 62.1-44.34:15.1 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.34:8. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank for the storage, use, or dispensing of regulated substances; and

2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or

2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time a release is reported to the Board.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition and regulations promulgated under this article include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored~~, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil~~;

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3. Septic tanks;

4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this definition;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or waste water collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

§ 62.1-44.34:9. Powers and duties of Board.

The Board is responsible for carrying out the provisions of this article and compatible provisions of federal acts and is authorized to:

1. Enforce the interim prohibition provisions in § 9003 (g) of United States Public Law 98-616. Until state underground storage tank standards promulgated by regulation become effective, the Board shall enforce the federal interim standard which prohibits installation of an underground storage tank for the purpose of storing regulated substances unless such tank:

a. Will prevent releases due to corrosion or structural failure for the operational life of the tank;

b. Is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

c. The material used in the construction or lining of the tank is compatible with the substance to be stored.

2. Exercise general supervision and control over underground storage tank activities in this Commonwealth.

3. Provide technical assistance and advice concerning all aspects of underground storage tank management.

4. Collect such data and information as may be necessary to conduct the state underground storage tank program.

5. Apply for such federal funds as may become available under federal acts and transmit such funds to appropriate persons.

6. Require notification by owners of underground storage tanks in accordance with the provisions of § 9002 of United States Public Law 98-616.

7. Require notification by owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974; however, the civil penalties specified in § 9006 (d) of United States Public Law 98-616 shall not apply to the foregoing notification requirement.

8. Promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations.

9. Require the owner or operator of an underground storage tank *who is the responsible person for the release* to undertake corrective action for any release of petroleum or any other regulated substance when the Board determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs, regardless of when the release occurred; or undertake corrective action for any release of petroleum or any other regulated substance into the environment from an underground storage tank if such action is necessary, in the judgment of the Board, to protect human health and the environment.

10. Seek recovery of costs incurred, excluding moneys expended from the Virginia Petroleum Storage Tank Fund which are governed by § 62.1-44.34:11, for undertaking corrective action or enforcement action with respect to the release of a regulated substance from an underground storage tank or oil from a facility.

§ 62.1-44.34:10. Definitions.

The following terms as used in this article shall have the meanings ascribed to them:

"Aboveground storage tanks" means any one or combination of tanks, including pipes used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than ninety percent above the surface of the ground. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979 and (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes aboveground storage tanks. This term does not include underground storage tanks or pipelines.

"Fund" means the Virginia Petroleum Storage Tank Fund.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity.

"Operator of ~~a~~ *an aboveground storage tank* facility" means any person who owns, operates, rents or otherwise exercises control over or responsibility for *one or more aboveground storage tanks at* a facility.

"Operator of an underground storage tank" means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

"Owner of an underground storage tank" means:

1. In the case of an underground storage tank in use or brought into use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

2. In the case of an underground storage tank in use before November 8, 1984, but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

~~"Petroleum storage tank vendor" means a person who manufactures, sells, installs or services an underground petroleum storage tank, its connective piping and associated equipment.~~

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, but not any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976; or

2. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (sixty degrees F and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Responsible person" means any person who is an owner or operator of an underground storage tank or an aboveground storage tank at the time the release is reported to the Board.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground connecting pipes, is ten percent or more beneath the surface of the ground. Exemptions from this definition include:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored~~, except for tanks having a capacity of more than 5,000 gallons and used for storing heating oil~~;

3. Septic tanks;

4. Pipeline facilities, including gathering lines, regulated under: (i) the Natural Gas Pipeline Safety Act of 1968, (ii) the Hazardous Liquid Pipeline Safety Act of 1979, or (iii) any intrastate pipeline facility regulated under state laws comparable to the provisions of law in (i) or (ii) of this definition;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or waste water collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; and

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

§ 62.1-44.34:11. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund is hereby established as a nonlapsing revolving fund to be used by the Board for (i) administering the state regulatory programs authorized by Articles 9, 10 and 11 (§ 62.1-44.34:8 et seq.) of this chapter, (ii) demonstrating financial responsibility, and (iii) other purposes as provided for by applicable provisions of state and federal law. All expenses, costs, civil penalties, charges and judgments recovered by or on behalf of the Board pursuant to Articles 9, 10 and 11 of this chapter, and all moneys received as reimbursement in accordance with applicable provisions of federal law and all fees collected pursuant to §§ 62.1-44.34:19.1 and 62.1-44.34:21, shall be deposited into the fund. Interest earned on the fund shall be credited to the fund. No moneys shall be credited to

the balance in the fund until they have been received by the fund. The fund shall be established on the books of the Comptroller and any funds remaining in such fund at the end of the biennium shall not revert to the general fund but shall remain in the fund.

The fund shall be administered by the Board consistent with the provisions of Subtitle I of the federal Solid Waste Disposal Act (P.L. 98-616, § 9001 et seq.), any approved state underground storage tank program and in accordance with the following provisions:

1. The fund shall be maintained in a separate account. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the Governor or the General Assembly.

2. Disbursements from the fund may be made only for the following purposes:

a. ~~Per~~ *Reasonable and necessary per* occurrence costs incurred on or after December 22, 1989, *by the owner or operator who is the responsible person,* in taking corrective action for any release of petroleum into the environment from an underground storage tank which are in excess of the per occurrence financial responsibility requirement imposed in § 62.1-44.34:12, up to one million dollars.

~~b. Per occurrence costs incurred in compensating third parties, including payment of judgments, for bodily injury and property damage caused by release of petroleum into the environment from an underground storage tank, up to one million dollars.~~

~~c. Per occurrence costs incurred by an operator whose net annual profits from all facilities do not exceed $10,000,000 for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator with financial responsibility imposed pursuant to subsection D of § 62.1-44.34:16 in an amount less than $200,000, per occurrence costs in excess of the required financial responsibility up to $1,000,000; (ii) for an operator with financial responsibility imposed in subsection D of § 62.1-44.34:16 in an amount equal to or greater than $200,000, per occurrence costs in excess of $200,000 up to $1,000,000; and (iii) for an operator exempt from financial responsibility requirements under § 62.1-44.34:17, per occurrence costs in excess of $2,500 up to $1,000,000. For purposes of this subdivision 2 c, the per occurrence financial responsibility requirement for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.~~

~~d. Per occurrence costs incurred by an operator whose net annual profits from all facilities exceed $10,000,000 which are in excess of the greater of $200,000 or the per occurrence financial responsibility requirement imposed in subsection D of § 62.1-44.34:16, up to $1,000,000 for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13. Until regulations promulgated under subsection D of § 62.1-44.34:16 are effective, the maximum amount of financial responsibility authorized under that subsection shall be deemed the amount of financial responsibility imposed for purposes of this subsection.~~

b. Reasonable and necessary per occurrence costs incurred on or after December 22, 1989, by the owner or operator who is the responsible person for compensating third parties, including payment of judgments for bodily injury and property damage caused by the release of petroleum into the environment from an underground storage tank, which are in excess of the per occurrence financial responsibility requirement imposed by § 62.1-44.34:12, up to one million dollars. Disbursements for third party claims shall be subordinate to disbursements for the corrective action costs in subdivision A 2 a of this section.

c. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities do not exceed ten million dollars for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator of a facility with a storage capacity less than 25,000 gallons, per occurrence costs in excess of $2,500 up to one million dollars; (ii) for an operator of a facility with a storage capacity from 25,000 gallons to 100,000 gallons, per occurrence costs in excess of $5,000 up to one million dollars; (iii) for an operator of a facility with a storage capacity from 100,000 gallons to twenty million gallons, per occurrence costs in excess of five cents per gallon of aboveground storage capacity up to one million dollars; and (iv) an operator of a facility with a storage capacity greater than twenty million gallons shall have no access to the Fund. For purposes of this subdivision (2c), the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.

d. Reasonable and necessary per occurrence costs incurred by an operator whose net annual profits from all facilities exceed ten million dollars for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 as follows: (i) for an operator of a facility with a storage capacity less than four million gallons, per occurrence costs in excess of $200,000 up to one million dollars; (ii) for an operator of a facility with a storage capacity from four million gallons to twenty million gallons, per occurrence costs in excess of five cents per gallon of aboveground storage capacity up to one million dollars; and (iii) an operator of a facility with a storage capacity greater than twenty million gallons shall have no access to the Fund. For purposes of this subdivision, the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for all facilities

located within the Commonwealth.

e. Costs incurred in taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank or from underground storage tanks exempted in clauses 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10, if such action is necessary, in the judgment of the Board, to protect human health and the environment.

f. Costs of corrective action up to one million dollars for any release of petroleum into the environment from underground storage tanks or from underground storage tanks exempted in clauses 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 (i) whose owner or operator cannot be determined by the Board within ninety days; or (ii) whose owner or operator is incapable, in the judgment of the Board, of carrying out such corrective action properly.

g. Costs of corrective action incurred by the Board for any release of petroleum into the environment from underground storage tanks which are otherwise specifically listed in exemptions 1 through 9 of the definition of an underground storage tank in § 62.1-44.34:10.

h. ~~Costs~~ *Reasonable and necessary per occurrence costs* of corrective action incurred on or after December 22, 1989, by the owner or operator in excess of $500 up to one million dollars for any release of petroleum into the environment from an underground storage tank exempted in clauses 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

i. The "cost share" of corrective action with respect to any release of petroleum into the environment from underground storage tanks undertaken under a cooperative agreement with the Administrator of the United States Environmental Protection Agency, as determined by the Administrator of the United States Environmental Protection Agency in accordance with the provisions of § 9003 (h) (7) (B) of the United States Public Law 98-616 (as amended in 1986 by United States Public Law 99-662).

j. Administrative costs incurred by the Board in carrying out the provisions of regulatory programs authorized by Articles 9, 10, and 11 (§ 62.1-44.34:8 et seq.) of this chapter.

k. All costs and expenses, including but not limited to personnel, administrative, and equipment costs and expenses, directly incurred by the Board or by any other state agency, in and for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

l . Procurement, maintenance and replenishment of materials, equipment and supplies, in such quantities and at such locations as the Board may deem necessary, for the abatement, containment, removal and disposal of oil pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title.

m. Costs and expenses, incurred by the Board or by any other state agency, acting at the direction of the Board, for the protection, cleanup and rehabilitation of waterfowl, wildlife, shellfish beds and other natural resources, damaged or threatened by the discharge of oil, owned by the Commonwealth or held in trust by the Commonwealth for the benefit of its citizens.

n. Refund of cash deposits held in escrow pursuant to Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title and reasonable interest thereon, and refunds of fees collected pursuant to § 62.1-44.34:21 as authorized by this chapter.

o. Administrative costs incurred by the Department of Motor Vehicles in the collection of fees specified in § 62.1-44.34:13.

3. No funds shall be paid for reimbursement of moneys expended for corrective action taken *for releases reported* prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in clauses 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

4. No funds shall be paid for reimbursement of moneys expended by an operator of a facility for containment and cleanup of a release from a facility of a product subject to § 62.1-44.34:13 *reported* prior to ~~the effective date of regulations required pursuant to § 62.1-44.34:15~~ *January 1, 1992*.

5. No funds shall be paid for reimbursement of moneys expended for payment of interest or other finance charges on loans which were used for corrective action or containment and cleanup of a release by a person in subdivisions A 3 or A 4 of this section, except for an owner or operator which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code *provided that: (i) the loan moneys have been paid for corrective action that was pre-approved by the Board, (ii) any and all disbursements received from the Fund shall be paid against the loan or for interest and points, and (iii) the payment of interest and points under this subdivision shall be limited to five years from the date the release is reported to the Board*.

6. No funds shall be paid for penalties, charges or fines imposed pursuant to any applicable local,

state or federal law.

7. No funds shall be paid for containment and cleanup costs that are reimbursed or are reimbursable from other applicable state or federal programs.

8. No funds shall be paid if the operator of the facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.

9. No funds shall be paid if the owner or operator of an underground storage tank or the operator of an aboveground storage tank facility fails to report a release of petroleum or a discharge of oil to the Board as required by applicable statutes, laws or regulations.

10. The Fund balance shall be maintained at a level sufficient to ensure that the Fund can serve as a financial responsibility demonstration mechanism for the owners and operators of underground storage tanks. Any disbursements made by the Board pursuant to subdivision 2 of this subsection may be temporarily reduced or delayed, in whole or in part, if such action is necessary, in the judgment of the Board, to maintain the Fund balance.

B. The Board shall seek recovery of moneys expended from the fund for corrective action under this section where the owner or operator of an underground storage tank has violated substantive environmental protection rules and regulations pertaining to underground storage tanks which have been promulgated by the Board.

C. For costs incurred for corrective action as authorized in subdivision A 2 e of this section, the Board shall seek recovery of moneys from the owner or operator of an underground storage tank up to the minimum financial responsibility requirement imposed on the owner or operator in § 62.1-44.34:12, or seek recovery of such costs incurred from any available federal government funds.

D. For costs incurred for corrective action taken resulting from a release from underground storage tanks specified in subdivision A 2 f of this section, the Board shall seek recovery of moneys from the owner or operator up to the minimum financial responsibility requirement imposed on the owner or operator in § 62.1-44.34:12, or seek recovery of such costs incurred from any available federal government funds.

E. The Board shall seek recovery of moneys expended from the fund for costs incurred for corrective action as authorized in subdivision A 2 g of this section or seek recovery of such costs incurred from any available federal government funds. However, the Board shall not seek recovery of moneys expended from the fund for costs of corrective action in excess of $500 from the owner or operator of an underground tank exempted in clauses 1 and 2 of the definition of underground storage tank in § 62.1-44.34:10 and aboveground storage tanks with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

F. The Board shall have the right of subrogation for moneys expended from the fund as compensation for personal injury, death or property damage against any person who is liable for such injury, death or damage.

G. The Board shall promptly initiate an action to recover all costs and expenses incurred by the Commonwealth for investigation, containment and cleanup of a discharge of oil or threat of discharge against any person liable for a discharge of oil as specified in Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of this title; provided that the Board shall seek recovery from an operator of expenditures from the fund only in the amount by which such expenditures exceed the amount authorized to be disbursed to the operator under subdivisions A 2 through A 8 of this section.

§ 62.1-44.34:12. Financial responsibility.

A. Requirements for maintaining evidence of financial responsibility for taking corrective action by all owners and operators of underground storage tanks ~~and petroleum storage tank vendors~~, and for compensating third parties for bodily injury and property damage by all such owners~~,~~ *and* operators ~~and petroleum storage tank vendors~~ are as follows:

1. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $5,000 per occurrence for taking corrective action and $15,000 per occurrence for compensating third parties, with an annual aggregate of $20,000;

2. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $10,000 per occurrence for taking corrective action and $30,000 per occurrence for compensating third parties, with an annual aggregate of $40,000;

3. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $20,000 per occurrence for taking corrective action and $60,000 per occurrence for compensating third parties, with an annual aggregate of $80,000;

4. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $30,000 per occurrence for taking corrective action and $120,000 per occurrence for compensating third parties, with an annual aggregate of $150,000;

5. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000; and

6. ~~Petroleum storage tank vendors and other~~ *Other* owners and operators, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000.

Financial responsibility may be established in accordance with regulations promulgated by the Board by any one or any combination of the following: insurance, guarantee, surety bond, letter of credit, irrevocable trust fund, or qualification as a self-insurer.

Any claim arising out of conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the person guaranteeing or providing evidence of financial responsibility. In such a case, the person against whom the claim is made shall be entitled to invoke all rights and defenses which would have been available to the owner or operator had such action been brought directly against the owner or operator.

This section shall not limit any other state or federal statutory, contractual, or common law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This section does not diminish the liability of any person under § 107 or § 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or other applicable law.

The Board shall adopt regulations specifying compliance dates for the demonstration of financial responsibility required by this section, in accordance with the compliance dates established in federal regulations by the United States Environmental Protection Agency.

B. Owners and operators of underground storage tanks who are unable to demonstrate financial responsibility in the minimum amounts specified in subsection A, and operators of facilities who are unable to demonstrate financial responsibility in amounts established pursuant to subsection D of § 62.1-44.34:16, may establish an insurance pool in order to demonstrate such financial responsibility. Any contract establishing such an insurance pool shall provide:

1. For election by pool members of a governing authority for the pool, which may be a board of directors, a majority of whom shall be elected or appointed officials of pool members.

2. A financial plan setting forth in general terms:

a. The insurance coverages to be offered by the insurance pool, applicable deductible levels, and the maximum level of claims which the pool will self-insure;

b. The amount of cash reserves to be set aside for the payment of claims;

c. The amount of insurance to be purchased by the pool to provide coverage over and above the claims which are not to be satisfied directly from the pool's resources; and

d. The amount, if any, of aggregate excess insurance coverage to be purchased and maintained in the event that the insurance pool's resources are exhausted in a given fiscal period.

3. A plan of management which provides for all of the following:

a. The means of establishing the governing authority of the pool;

b. The responsibility of the governing authority for fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency;

c. The basis upon which new members may be admitted to, and existing members may leave, the pool;

d. The identification of funds and reserves by exposure areas; and

e. Such other provisions as are necessary or desirable for the operation of the pool.

C. The formation and operation of an insurance pool under this section shall be subject to approval by the State Corporation Commission which may, after notice and hearing, establish reasonable requirements and regulations for the approval and monitoring of such pools, including prior approval of pool administrators and provisions for periodic examinations of financial condition.

The State Corporation Commission may disapprove an application for the formation of an insurance pool, and may suspend or withdraw such approval whenever it finds that such applicant or pool:

1. Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the Commission or its representative;

2. Has refused, or its officers or agents have refused, to furnish satisfactory evidence of its financial and business standing or solvency;

3. Is insolvent, or is in such condition that its further transaction of business in this Commonwealth is hazardous to its members and creditors in this Commonwealth, and to the public;

4. Has refused or neglected to pay a valid final judgment against it within sixty days after its rendition;

5. Has violated any law of this Commonwealth or has violated or exceeded the powers granted by its

members;

6. Has failed to pay any fees, taxes or charges imposed in this Commonwealth within sixty days after they are due and payable, or within sixty days after final disposition of any legal contest with respect to liability therefor; or

7. Has been found insolvent by a court of any other state, or by the Insurance Commissioner or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

§ 62.1-44.34:15.1. Regulations for aboveground storage tanks.

The Board shall adopt regulations and develop procedures necessary to prevent pollution of state waters, lands, or storm drain systems from the discharge of oil from new and existing aboveground storage tanks. These regulations shall be developed in substantial conformity with the current codes and standards recommended by the National Fire Protection Association. To the extent that they are consistent with the Board's program, the Board shall incorporate accepted industry practices contained in the American Petroleum Institute publications and other accepted industry standards when developing the regulations contemplated by this section. The regulations shall provide the following:

1. For existing aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control, testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board) and formal tank inspections every five years in accordance with accepted industry practices and procedures approved by the Board. Initial testing shall be on a schedule approved by the Board. ~~For facilities not engaged in the resale of oil, aboveground~~ *Aboveground* storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures, including an audible staged alarm with immediate and controlled shut down procedures, or equivalent measures established by the Board;

c. To prevent leaks from piping, requirements for cathodic protection, and pressure testing to be conducted at least once every five years, or equivalent measures established by the Board;

d. To prevent and identify leaks from any source, requirements (i) for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements, (ii) for monthly gauging and inspection of all ground water monitoring wells located at the facility, and monitoring of the well head space for the presence of vapors indicating the presence of petroleum, and (iii) for quarterly sampling and laboratory analysis of the fluids present in each such monitoring well to determine the presence of petroleum or petroleum by-product contamination; and

e. To ensure proper training of individuals conducting inspections, requirements for proper certification or training by operators relative to aboveground storage tanks.

2. For existing aboveground storage tanks at facilities with an aggregate capacity of less than one million gallons but more than 25,000 gallons:

a. To prevent leaks from aboveground storage tanks, requirements for inventory control and testing for significant inventory variations (e.g., test procedures in accordance with accepted industry practices, where feasible, and approved by the Board). Initial testing shall be on a schedule approved by the Board. ~~For facilities not engaged in the resale of oil, aboveground~~ *Aboveground* storage tanks totally off ground with all associated piping off ground, aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil, and aboveground storage tanks containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control and testing for significant variations. In accordance with subdivision 5 of this section, the Board shall promulgate regulations which provide for variances from inventory control and testing for significant variation for (i) aboveground storage tanks with Release Prevention Barriers (RPBs) with all associated piping off ground, (ii) aboveground storage tanks with a de minimis capacity (12,000 gallons or less), and (iii) other categories of aboveground storage tanks, including those located within a building or structure, as deemed appropriate;

b. To prevent overfills, requirements for safe fill and shut down procedures;

c. To prevent leaks from piping, requirements for pressure testing to be conducted at least once every

five years or equivalent measures established by the Board; and

d. To prevent and identify leaks from any source, requirements for a visual inspection of the facility each day of normal operations and a weekly inspection of the facility with a checklist approved by the Board, performed by a person certified or trained by the operator in accordance with Board requirements developed in accordance with subdivision 1 of this section.

3. For aboveground storage tanks existing prior to the effective date of the regulations required by this section, when the results of a tank inspection indicate the need for replacement of the tank bottom, the operator of a facility shall install a release prevention barrier (RPB) capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection. The decision to replace an existing tank bottom shall be based on the criteria established by regulations pursuant to this section.

4. The Board shall establish performance standards for aboveground storage tanks installed, retrofitted or brought into use after the effective date of the regulations promulgated pursuant to this subsection that incorporate all technologies designed to prevent oil discharges that have been proven in accordance with accepted industry practices and shown to be cost-effective.

5. The Board shall establish criteria for granting variances from the requirements of the regulations promulgated pursuant to this section (i) on a case-by-case basis and (ii) by regulation for categories of aboveground storage tanks, except that the Board shall not grant a variance that would result in an unreasonable risk to the public health or the environment~~, or that would apply to facilities engaged in the resale of oil~~. Variances by regulation shall be based on relevant factors such as tank size, use, and location.