

HOUSE BILL NO. 899

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Lopez)

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.

**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 1320 gallons or more, excluding its associated pipes; that is used for storing 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

27 or U.S. Department of Homeland Security, including federal regulations promulgated at 33 C.F.R. Chapter  
28 I, or subject to other federal law governing the transportation of hazardous materials; (vi) a swimming  
29 pool; (vii) a device containing surface water, groundwater, demineralized water, noncontact cooling water,  
30 drinking water for human or animal consumption, or water stored for fire or emergency purposes; (viii) a  
31 device containing food or food-grade materials used for human or animal consumption and regulated  
32 under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.); (ix) a device holding  
33 wastewater that is being actively treated or processed, including a clarifier, chlorine contact chamber, or  
34 batch reactor; (x) a tank that is empty and is held in inventory or offered for sale; (xi) a piece of electrical  
35 equipment, such as a transformer, circuit breaker, or voltage regulator transformer; (xii) a device holding  
36 reclaimed water; or (xiii) a tank subject to the Virginia Gas and Oil Act (§ 45.2-1600 et seq.).  
37 "Aboveground storage tank" does not include a tank located on a farm, the contents of which are used  
38 exclusively for agricultural purposes.

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

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

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

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

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

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

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

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

56 "Person" means any individual, two or more individuals, firm, corporation, association,  
57 partnership, or governmental unit or agency thereof.

58 "Tank" means a device that is designed to contain an accumulation of a hazardous substance and  
59 is constructed of nonearthen materials that provide structural support, such as concrete, steel, or plastic.

60 "Tank" includes such a device whether it is located indoors or outdoors and whether it is fully enclosed or  
61 partially enclosed. "Tank" does not include a flow-through process tank as defined in 40 C.F.R. Part 280.

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

65 **§ 62.1-44.34:30. Powers and duties of Board regarding aboveground storage tanks.**

66 The Board shall carry out the provisions of this article and compatible provisions of federal acts  
67 and is authorized to:

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

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

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

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

75 5. Provide guidance to the Director on the contents of the report required under subsection H of §  
76 62.1-44.34:31.

77 **§ 62.1-44.34:31. Registration of aboveground storage tanks.**

78 A. By January 1, 2023, the operator of any aboveground storage tank shall register such tank with  
79 the Director. The registration for each aboveground storage tank shall contain the following information:

- 80            1. Information about the operator of the aboveground storage tank, including the operator's name
- 81 and address and information about the operator's contact person.
- 82            2. Information about the owner of the aboveground storage tank, including the owner's name and
- 83 address and information about the owner's contact person.
- 84            3. Information about the facility at which the aboveground storage tank is located, including its
- 85 name and address, information about any on-site contact person, and the number of aboveground storage
- 86 tanks at the same facility.
- 87            4. The date of installation of the aboveground storage tank.
- 88            5. The capacity of the aboveground storage tank in gallons.
- 89            6. The current status of the aboveground storage tank, whether in service or out of service.
- 90            7. The manufacturer and model number of the aboveground storage tank, if known.
- 91            8. The current contents of the aboveground storage tank.
- 92            9. The predominant contents of the aboveground storage tank. For purposes of this section,
- 93 "predominant contents" means the hazardous substance that was in the aboveground storage tank for the
- 94 longest duration during the 12-month period preceding the registration or renewal.
- 95            10. The material of which the aboveground storage tank is constructed, including concrete, steel,
- 96 plastic, fiberglass, or another material.
- 97            11. The material of which any release prevention barrier for the aboveground storage tank is
- 98 constructed, including concrete, steel, plastic, fiberglass, or another material.
- 99            12. The type of cathodic protection provided for the aboveground storage tank, if any.
- 100           13. The type of overfill protection provided for the aboveground storage tank, if any.
- 101           14. The type of leak detection system provided for the aboveground storage tank, if any, including
- 102 visual monitoring, an in-tank gauging system, interstitial monitoring, soil vapor monitoring, or another
- 103 system.
- 104           15. The type of secondary containment provided for the aboveground storage tank, if any.

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

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

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

115 C. Each registration shall be accompanied by a registration fee, payable to the State Treasurer and  
116 creditable to the Hazardous Substance Aboveground Storage Tank Fund established pursuant to § 62.1-  
117 44.34:35, as follows: (i) \$50 for any aboveground storage tank with a capacity of at least 1,320 gallons  
118 but less than 5,000 gallons; (ii) \$250 for any aboveground storage tank with a capacity of at least 5,000  
119 gallons but less than 25,000 gallons; and (iii) \$600 for any aboveground storage tank with a capacity of  
120 25,000 gallons or more. No political subdivision of the Commonwealth shall charge a fee in connection  
121 with the registration of any aboveground storage tank under this article.

122 D. For aboveground storage tanks installed on or after January 1, 2023, but before the effective  
123 date of regulations adopted pursuant to subsection F, an operator shall submit a registration to the Director  
124 pursuant to subsection A, along with the appropriate registration fee, within 30 days of installation of the  
125 aboveground storage tank.

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

130 F. By September 1, 2023, the Board shall adopt regulations regarding registration requirements,  
131 registration fees, registration renewal requirements and fees, and recordkeeping requirements. Such

132 regulations may require operators to submit information that differs from that listed in subsection A. The  
133 fees listed in subsection C shall be valid for registrations before January 1, 2027. The Board may adjust  
134 the fees set forth in subsection C for registrations submitted on or after January 1, 2027.

135 G. 1. By September 1, 2023, the Director shall compile an inventory of aboveground storage tanks  
136 in the Commonwealth based upon the registrations received. Except as provided in subdivision 2, the  
137 inventory shall be publicly available through print and electronic means, shall be searchable electronically,  
138 and shall be updated at least annually thereafter, or upon adoption of a different schedule as specified by  
139 the Board through regulation.

140 2. Notwithstanding the requirements of subdivision 1, the Director may withhold information  
141 about an individual aboveground storage tank from the publicly available inventory if the information is  
142 exempt from public disclosure pursuant to an exemption set forth in § 2.2-3705.2 of the Virginia Freedom  
143 of Information Act (§ 2.2-3700 et seq.).

144 H. By September 1, 2024, and biennially thereafter, the Director shall produce a report  
145 summarizing in tabular and graphical form the data collected in the inventory.

146 **§ 62.1-44.34:32. Access to aboveground storage tanks.**

147 Any operator of an aboveground storage tank shall, upon request of the Director or his designee,  
148 furnish information relating to such tank and any associated equipment and contents; conduct reasonable  
149 monitoring or testing; permit the Director, at all reasonable times, to inspect and copy records relating to  
150 such tank; and permit the Director to access any aboveground storage tank for containment and cleanup.  
151 The Director or his designee may enter any facility or other place where an aboveground storage tank is  
152 located at any time; inspect and obtain samples of any fluid contained in an aboveground storage tank;  
153 conduct monitoring and testing of any aboveground storage tank, associated equipment, or contents or  
154 surrounding soils, surface water, or groundwater; and undertake containment and cleanup pertaining to a  
155 discharge or a substantial threat of a discharge as provided in this article.

156 **§ 62.1-44.34:33. Discharge prohibited; aboveground storage tank safety.**

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

159            **§ 62.1-44.34:34. Reporting of discharge.**

160            Any person discharging or causing or permitting a discharge from an aboveground storage tank of  
161 a hazardous substance that (i) enters into or upon any land, storm drain system, or state waters within the  
162 Commonwealth or (ii) reasonably may be expected to enter such waters, land, or drain system, and any  
163 operator of an aboveground storage tank from which there is such a discharge, shall, immediately upon  
164 learning of the discharge, notify the following of such discharge: (a) the Director; (b) the local director or  
165 coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision in which  
166 the discharge occurs; (c) the local director or coordinator of emergency services appointed pursuant to §  
167 44-146.19 for any other political subdivision reasonably expected to be affected by the discharge; and (d)  
168 appropriate federal or state authorities.

169            **§ 62.1-44.34:35. Hazardous Substance Aboveground Storage Tank Fund.**

170            There is hereby created in the state treasury a special nonreverting fund to be known as the  
171 Hazardous Substance Aboveground Storage Tank Fund. The Fund shall be established on the books of  
172 the Comptroller. All moneys received by or on behalf of the Board pursuant to this article or any regulation  
173 adopted thereunder, except moneys received pursuant to § 62.1-44.34:36 or a regulation directing that  
174 moneys received be paid into the state treasury and credited to the Virginia Environmental Emergency  
175 Response Fund established pursuant to § 10.1-2500, shall be paid into the state treasury and credited to  
176 the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
177 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the  
178 general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of  
179 administering the state programs authorized by this article and shall not be used for corrective action or  
180 containment and cleanup. Expenditures and disbursements from the Fund shall be made by the State  
181 Treasurer on warrants issued by the Comptroller upon written request signed by the Director or his  
182 designee.

183            **§ 62.1-44.34:36. Enforcement; civil penalties.**

184            A. In the event of a (i) violation of any provision of this article, regulation, administrative or  
185 judicial order, or term or condition of approval issued under this article or (ii) failure to comply with a

186 special order issued by the Board pursuant to this section, the Board is authorized to proceed by civil  
187 action to obtain an injunction of such violation, to obtain any affirmative equitable relief that is  
188 appropriate, and to recover all costs, damages, and civil penalties resulting from such violation or failure  
189 to comply. The Board shall be entitled to an award of reasonable attorney fees and costs in any action in  
190 which it is a prevailing party.

191 B. Any person who fails to register an aboveground storage tank in accordance with § 62.1-  
192 44.34:31 shall be subject to a civil penalty, within the discretion of the court, of not less than \$1,000 nor  
193 more than \$10,000 for the initial violation, and \$1,000 per day for each day of violation thereafter. Any  
194 person who fails to report a discharge as required by § 62.1-44.34:34 shall be subject to a civil penalty,  
195 within the discretion of the court, of not less than \$1,000 nor more than \$50,000 for the initial violation,  
196 and \$10,000 for each day of violation thereafter.

197 C. Civil penalties may be assessed under this article either (i) by a court in an action brought by  
198 the Board pursuant to this section, as specified in § 62.1-44.15, or (ii) with the consent of the person  
199 charged, in a special order issued by the Board. All penalties shall be paid into the state treasury and  
200 deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund established  
201 pursuant to § 10.1-2500. In determining the amount of any penalty, consideration shall be given to the  
202 amount of the hazardous substance stored or discharged; the characteristics of the hazardous substance;  
203 the willfulness of the violation; any history of noncompliance; the actions of the person in reporting,  
204 containing, and cleaning up any discharge or threat of discharge; the damage or injury to state waters or  
205 the impairment of their beneficial use; the cost of containment and cleanup; the nature and degree of injury  
206 to or interference with general health, welfare, and property; and the available technology for preventing,  
207 containing, reducing, or eliminating the discharge.

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