

HOUSE BILL NO. 949

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 5, 2024)

(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 62.1-44.34:33, relating to hazardous
substances; Hazardous Substance Facility Response Plans; 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 62.1-44.34:33, as follows:**

Article 13.

Hazardous Substance Facility Response Plans.

§ 62.1-44.34:29. Definitions.

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

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping,
except discharges in compliance with a permit issued by the Board or Department.

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

"Facility" means any development, building, structure, or installation within the Commonwealth
that is required to submit a facility response plan pursuant to the EPA's Clean Water Act Hazardous
Substances Worst Case Discharge Planning Regulations at 40 C.F.R. Part 118.

"Hazardous substance" means any federal Clean Water Act hazardous substance designated in 40
C.F.R. Part 116. "Hazardous substance" does not include oil.

"Oil" means oil of any kind and in any form, including animal fat, vegetable oil, cooking oil,
petroleum and any petroleum by-product, fuel oil, lubricating oil, sludge, oil refuse, oil mixed with other

26 wastes that are not a hazardous substance, crude oil, and any other liquid hydrocarbon regardless of
27 specific gravity.

28 "Operator" means any person that owns, operates, charters, rents, or otherwise exercises control
29 or responsibility for a facility.

30 **§ 62.1-44.34:30. Evidence of hazardous substance facility response plan required.**

31 Any person required to submit a facility response plan pursuant to the EPA's Clean Water Act
32 Hazardous Substance Worst Case Discharge Planning Regulations shall submit evidence of an EPA-
33 approved facility response plan to the Department within 30 days of approval by the EPA. The facility
34 shall also implement and comply with such plan.

35 **§ 62.1-44.34:31. Reporting of hazardous substance discharge.**

36 Any person discharging or causing or permitting a discharge of a hazardous substance from a
37 facility required to submit evidence of an EPA-approved facility response plan pursuant to § 62.1-44.34:30
38 that (i) enters into or upon any land, storm drain system, or state waters within the Commonwealth or (ii)
39 is not contained and may reasonably be expected to enter such land, drain system, or waters, and any
40 operator of a facility from which there is such a discharge shall, immediately upon learning of the
41 discharge, notify the following of such discharge: (a) the Director, (b) the local director or coordinator of
42 emergency services appointed pursuant to § 44-146.19 for the political subdivision in which the discharge
43 occurs, (c) the local director or coordinator of emergency services appointed pursuant to § 44-146.19 for
44 any other political subdivision reasonably expected to be affected by the discharge, and (d) the appropriate
45 federal or state authorities. Notice shall be deemed to have been given under this section for any discharge
46 of a hazardous substance to state lands in amounts less than the reportable quantity in 40 C.F.R. Part 117
47 if the recordkeeping requirements of § 62.1-44.34:32 have been met and the hazardous substance has been
48 addressed in accordance with the EPA-approved facility response plan.

49 **§ 62.1-44.34:32. Recordkeeping and access to records and facilities.**

50 A. All records relating to compliance with the requirements of this article shall be maintained by
51 the operator of a facility at the facility or at an alternate location approved by the Department for a period
52 of at least five years. Such records shall be available for inspection and copying by the Department and

53 shall include all records relating to discharge events or other discharges of hazardous substances from the
54 facility and all supporting documentation for developed facility response plans.

55 B. A record of all discharges of hazardous substances to state lands in amounts less than the
56 reportable quantity in 40 C.F.R. Part 117 shall be established and maintained for a period of five years in
57 accordance with subsection A.

58 C. Every operator of a facility shall, upon reasonable notice, permit at reasonable times and under
59 reasonable circumstances, the local director or coordinator of emergency services appointed pursuant to §
60 44-146.19 for the political subdivision in which the facility is located or of any political subdivision within
61 one mile of the facility to have access to and to copy all information required to be kept in subsections A
62 and B.

63 D. Any local director or coordinator of emergency services appointed pursuant to § 44-146.19 for
64 the political subdivision in which the facility is located or of any political subdivision within one mile of
65 the facility may enter and inspect any facility at a reasonable time and under reasonable circumstances,
66 provided that in nonemergency situations such local director, coordinator, or a designated agent of such
67 local director or coordinator, shall be accompanied by the operator or his designee.

68 E. The Director may withhold information submitted or obtained pursuant to this section from
69 public disclosure pursuant to (i) an exemption provided under the Virginia Freedom of Information Act
70 (§ 2.2-3700 et seq.), (ii) confidentiality claims asserted at the time of submission pursuant to § 62.1-44.21,
71 or (iii) requirements set forth by the U.S. Department of Homeland Security.

72 **§ 62.1-44.34:33. Enforcement; civil penalties.**

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

80 B. Any person that negligently, willfully, or knowingly (i) discharges or causes to discharge a
81 hazardous substance from a facility or (ii) fails to implement or comply with an EPA-approved facility
82 response plan is subject to a civil penalty of not less than \$1,000 nor more than \$10,000 for the initial
83 violation and \$1,000 per day for each day of such violation thereafter. Any person that fails to report a
84 discharge or willfully or knowingly makes any false statement or representation regarding such discharge
85 as described is subject to a civil penalty of not less than \$1,000 nor more than \$50,000 for the initial
86 violation and \$10,000 for each day of such violation thereafter. Such civil penalties shall be paid into the
87 state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response
88 Fund established pursuant to § 10.1-2500.

89 **2. That the provisions of this act shall become effective upon the effective date of the U.S.**
90 **Environmental Protection Agency's final Rule on Clean Water Act Hazardous Substance Worst**
91 **Case Discharge Planning.**

92 **3. That the Department of Environmental Quality shall develop guidance to implement the**
93 **provisions of this act within six months of the effective date of the U.S. Environmental Protection**
94 **Agency's final Rule on Clean Water Act Hazardous Substance Worst Case Discharge Planning or**
95 **by December 1, 2025, whichever comes later.**

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