GUIDELINES FOR THE MITIGATION OF ACCIDENTAL DISCHARGES OF MOTOR VEHICLE FLUIDS (NON-CARGO)

PURPOSE

The purpose of this document is to provide ***practical guidelines*** for the mitigation of accidental discharges of motor vehicle fluids ***in any quantity***, whether from a vehicle accident or other unintentional act (fuel tank overfill, etc.). Motor vehicle fluids include gasoline, diesel fuel, hydraulic fluid, motor oil, and antifreeze coolant solutions.

Motor vehicle fluids DO NOT include any discharge from the cargo tank of a commercial vehicle OR any discharge from any type of container being transported in or on any vehicle as cargo.

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COMPONENTS OF THE MITIGATION PROCESS

Mitigation includes the following components as detailed below:

INCIDENT MANAGEMENT
CONTROLLING THE DISCHARGE
CONTAINING THE DISCHARGE
RECOVERY OF MOTOR VEHICLE FLUIDS
CLEANUP EQUIPMENT RESUPPLY

INCIDENT MANAGEMENT

Section 27-15.1 of the Code of Virginia (text available on page 12) states that the fire officer in charge has the authority to maintain order at emergency incidents and direct the actions of fire fighters. However, it further states that this authority may not be used to inhibit or obstruct members of law enforcement agencies from performing their normal duties. Therefore, cooperation between fire, law enforcement, and highway department officials is essential for the effective management of these types of incidents.

This document is also in support of Executive Order 58 “State Wide Traffic Incident Management” and the National Unified Goals (NUG). These goals include; responder safety, quick incident clearance and improved interoperable communications between responding agencies.

CONTROLLING THE DISCHARGE (stopping the leak)

Procedures used to control the accidental discharge of motor vehicle fluids should be based upon the availability of a local fire department’s equipment and training related to these activities.

CONTAINING THE DISCHARGE (preventing the spread)

Fire departments generally have equipment such as shovels, absorbents, and plastic sheeting necessary to contain an accidental discharge of motor vehicle fluids (non-cargo). However, use of this equipment for containment activities also requires training at a minimum of the Hazardous Materials Operations Level. In addition, the use of air-monitoring equipment, such as combustible gas indicators and photo ionization devices, is strongly recommended to provide for the health and safety of responders.

RECOVERY OF MOTOR VEHICLE FLUIDS (cleanup and disposal)

Recovery includes the following steps:

Step 1 Reporting the incident
Step 2 Determining the responsible party
Step 3 Determining the appropriate cleanup enforcement authority
Step 4 Cleaning up the discharge
Step 5 Disposing of contaminated materials

Details for each step of the recovery process are included on pages 2-7.

CLEANUP EQUIPMENT RESUPPLY

There are several options available to allow fire departments to restock containment and cleanup supplies used during cleanup operations. These options, along with specific details to obtain resupply through the Virginia Department of Emergency Management (VDEM), are outlined on page 8.

RECOVERY OF MOTOR VEHICLE FLUID DISCHARGES

STEP 1 REPORTING THE INCIDENT

A. Reporting guidelines are detailed in the Commonwealth of Virginia Emergency Operations Plan. The fire department or law enforcement official on scene having knowledge of the discharge should inform the responsible party of the following reporting requirements:

1. Report to the National Response Center (NRC) (800) 424-8802

   Accidental discharges of oil (as defined on page 18) that reach, or have the potential to reach, navigable waters. Reporting required by the Federal Clean Water Act, Section 311 (text available on page 18).

2. Report to the Virginia Emergency Operations Center (VEOC) (800) 468-8892

   Accidental discharges from the fuel tanks of commercial vehicles or vessels that have a fuel tank capacity of *greater than 150 gallons.* For example, a commercial vehicle with two fuel tanks, each with 80-gallon capacity, has a total tank capacity of 160 gallons. Reporting required by State Water Control Law, Section 62.1-44.34:19 (text available on page 16).

B. *The following discharges, when NOT a threat to navigable waters, are exempt from reporting requirements (However, clean-up is still required by R.P.):*

1. Accidental discharges [Editor's note: meaning discharges of oil] from farm vehicles or noncommercial vehicles.

2. Accidental discharges from the fuel tanks of commercial vehicles or vessels that have a fuel tank capacity of *150 gallons or less.* For example, a commercial vehicle with two fuel tanks, each with 70-gallon capacity, has a total tank capacity of 140 gallons.

   These exemptions are permitted by Section 62.1-44.34:23 (text available on page 17).

C. To insure proper reporting when incidents occur which involve the accidental discharge of motor vehicle fluids, **the fire department** or **law enforcement official** on scene having knowledge of the discharge **should** also notify the VEOC at (800) 468-8892 of any reportable incident based upon the preceding reporting requirements.

STEP 2 DETERMINING THE RESPONSIBLE PARTY

The law enforcement officer on site should be used to identify the responsible party/parties(*). The owner of the vehicle should be identified and, in cases involving motor carriers, the operating authority should be identified. Information should include the carrier's name, address, telephone number, USDOT or ICC number, shipper information, and insurance carrier information. Trained motor carrier officers are an excellent resource. The owner of the property where the discharge is located may also need to be determined.

This information should be obtained early during the course of the incident.

(*) The responsible party is generally defined as the party in control of the vehicle which is the source of the discharge.

STEP 3 DETERMINING THE APPROPRIATE CLEANUP ENFORCEMENT AUTHORITY

State and federal authorities to enforce the cleanup from an accidental discharge of motor vehicle fluids are dependent upon the type of vehicle involved and the type of material discharged. Some accidental discharges of motor vehicle fluids are exempt from state reporting and cleanup requirements. Refer to pages 10 and 11 for an explanation of state and federal enforcement authority options.

Also, there are other authorities, such as local codes and ordinances, that can be enforced to compel cleanup. Therefore, personnel using this document should check with their appropriate local city or county to determine the application of any local codes or ordinances to these types of situations.

<u>STEP 4</u> CLEANING UP THE DISCHARGE

A. Depending upon the extent of the discharge, cleanup for an accidental discharge of motor vehicle fluids can be performed by a contractor, fire department, wrecker operator (5 gallons or less), property owner, or responsible party.

B. Cleanup performed by a fire department, wrecker operator, property owner, or responsible party should be limited to spills of a magnitude within their capabilities.

   Guidelines for a fire department, wrecker operator, property owner, or responsible party that conducts cleanup operations are provided in Step 4, Option A (page 5).

C. If the fire department, wrecker operator, property owner, or responsible party believe that the spill is beyond their capabilities, then the use of a contractor becomes necessary.

   Guidelines for the selection of a contractor are provided in Step 4, Option B (page 6).

   The responsibility to select a contractor and fund the cleanup operation is dependent upon the identification of the responsible party and whether or not the responsible party is willing and able to fulfill this responsibility.

   IMPORTANT NOTE: When the decision is reached to use a contractor, the responsible party should be provided an opportunity to select a contractor of *their choice*.

D. Any mitigation or cleanup activities which involve the removal of large amounts of soil, such as digging to construct a retention area, can potentially damage underground utilities in the affected area. Prior to conducting these types of operations, contact *Miss Utility of Virginia* to request emergency notification of utility locators. Additional information regarding this procedure is included on page 21.

E. When necessary, direction on the extent of cleanup required and the disposal of absorbents contaminated with motor vehicle fluids can be obtained from each regional office of the Virginia Department of Environmental Quality (VDEQ). Contact with the appropriate VDEQ office can be made through the VEOC at (800) 468-8892.

F. If cleanup options listed in Step 4, Options A or B, are NOT practical for a particular situation, contact the VEOC and request assistance from a Virginia Department of Emergency Management (VDEM) Hazardous Materials Officer.

G. Whenever a contractor is used to conduct the cleanup, an official representative from an organization such as a fire department, law enforcement organization, or transportation department should remain on scene until the contractor takes control of the incident.

H. The owner of the property where the discharge occurred should be contacted by local officials if there is any concern that cleanup activities may necessitate restoration (e.g., replace contaminated soil, restore road shoulder, etc.)

STEP 4, OPTION A CLEANUP PERFORMED BY A FIRE DEPARTMENT, WRECKER OPERATOR, PROPERTY OWNER, OR RESPONSIBLE PARTY

1. Cleanup performed by a fire department, wrecker operator, property owner, or responsible party should be limited to spills of a magnitude within their capabilities.

2. Cleanup normally involves the use of granular absorbents, pads and booms, and in some circumstances dispersants may be applied to the spill.

3. The use of dispersants is regulated. Guidance on the use of dispersants can be obtained from VDEQ. Contact with the appropriate VDEQ office can be made through the VEOC at (800) 468-8892.

4. LARGE amounts of granular absorbents should be used to safely clean up spills of gasoline. This is necessary to reduce the concentration of gasoline's benzene component to acceptable levels for personal safety and health.

5. Biodegradable absorbents and absorbents that can release their contents when compressed (such as pads and booms) can only be disposed of in approved landfills as determined by VDEQ. Refer to page 7 for additional details on disposal guidelines.

6. Contaminated absorbent material and soil should be placed in a suitable container, such as large plastic trash bags (double lined for strength), five-gallon plastic pails, or recovery drums. Care must be taken not to overload the capacity of any container used to store contaminated absorbents.

   If possible, separate biodegradable and non-biodegradable absorbents into different containers. Non-biodegradable absorbents include "kitty litter," soil, sand, and vermiculite.

7. Each container should be securely sealed and clearly marked to indicate its content. Markings should include the type of absorbent used and the material absorbed. Also, if a fire department conducts the cleanup, a point-of-contact for the department should be included. ***The preceding information is critical to ensure proper disposal.***

STEP 4, OPTION B SELECTING A CONTRACTOR

The responsibility to select a contractor and fund the cleanup operation is dependent upon the identification of the responsible party and whether or not the responsible party is willing and able to fulfill this responsibility. Listed below is a suggested sequence of options to select a contractor.

1. RESPONSIBLE PARTY

   a. The responsible party should be provided an opportunity to select a contractor of *their choice*. However, the contractor must provide for a PROMPT response.

   b. Recommendations for locally available contractors should be provided to the responsible party. (Refer to item 4 below for additional information.)

2. PROPERTY OWNER

   a. If the responsible party cannot be located, is unwilling to cooperate, or is unable to assist (such as when transported to a hospital following a vehicle accident), then the property owner where the accidental discharge occurred may be responsible and should be provided an opportunity to arrange for cleanup.

   b. Recommendations for locally available contractors should be provided to the property owner. (Refer to item 4 below for additional information.)

3. GOVERNMENT ACTION

   a. If both the responsible party and the property owner are unwilling or unable to make arrangements for cleanup, OR if the fire officer or law enforcement officer have reason to believe that the contractor selected is unqualified or will be unable to provide for a PROMPT response, then VDEQ should be contacted to discuss selection of a contractor and possible funding for cleanup. Contact with the appropriate VDEQ office can be made through the VEOC at (800) 468-8892.

   - OR -

   b. The fire officer, through the authority of the local emergency response plan, can select a contractor, pay for the cleanup, and then recover the necessary costs from the responsible party. For information on this option, refer to page 10, Cleanup Enforcement Authority Option C.

4. LOCALLY AVAILABLE CONTRACTORS

   Localities should establish a resource list with telephone numbers of locally available cleanup contractors. Space to record this information is provided on page 11. Knowledge of each contractor's capabilities and general response time should be determined in advance of need.

<u>STEP 5</u> DISPOSING OF CONTAMINATED MATERIALS

A. It is recommended that personnel from fire departments, law enforcement organizations, and transportation departments ***SHOULD NOT*** take possession of contaminated materials.

B. Contractors or the wrecker company that conduct cleanup operations will remove and dispose of contaminated materials in a lawful manner.

C. Fire departments that conduct cleanup operations should attempt to have contaminated materials disposed of in any one of the following manners:

1. Request that the wrecker operator remove the contaminated materials along with the vehicle being towed.

- OR -

2. Leave all containers on site for disposal by either the responsible party or property owner. Stage the containers off the roadway and, if possible, behind existing guardrails, or otherwise in protected areas delineated by road cones, barrier tape, etc.

   Inform the responsible party or property owner to obtain guidelines for proper disposal from VDEQ. Contact with the appropriate VDEQ office can be made through the VEOC at (800) 468-8892.

CLEANUP EQUIPMENT RESUPPLY

A fire department that performs cleanup operations may be eligible for replacement of absorbents, pads, booms, and any equipment damaged during the incident through one or more of the following options:

A. Request resupply from a contractor on site (should a contractor be called to assist the fire department).

B. The local fire department can purchase replacement supplies and then recover the necessary costs from the responsible party. Refer to page 10, Cleanup Enforcement Authority Option C, for further information.

CLEANUP ENFORCEMENT AUTHORITY GENERAL GUIDELINES
(State and Federal)

Selection of the appropriate state and federal authorities to enforce the cleanup from an accidental discharge of motor vehicle fluids is dependent upon the type of vehicle involved and the type of material discharged. Some accidental discharges of motor vehicle fluids are exempt from state reporting and cleanup requirements. However, there are other authorities, such as local codes and ordinances, that can be enforced to compel cleanup. Therefore, personnel using this document should check with their appropriate local city or county government officials to determine the application of any local codes or ordinances to these types of situations.

STEP 1 Determine the **type of vehicle** involved in the incident.

STEP 2 Determine the **type of discharge** that has occurred.

STEP 3 Each situation has various **enforcement authority options** available. Select from the appropriate enforcement authority options listed below.

A summary of each state and federal enforcement authority option is provided on page 10. A more complete text of each option with enforcement highlights can be found on pages 12-20.

STEP 1	STEP 2	STEP 3
Type of Vehicle	Type of Discharge	State & Federal Authority Options
Any type	Engine coolant	C, D
Noncommercial or farm vehicle	Any discharge, except engine coolant	B, C, D
Commercial	Any amount discharged from the fuel tank(s) of a vehicle with a total tank capacity of 150 gallons or less (*)	B, C, D
Commercial	Any amount discharged from the fuel tank(s) of a vehicle with a total tank capacity greater than 150 gallons (**)	A, B, C, D
Commercial	Discharge of any vehicle fluid other than fuel and engine coolant (includes motor oil and hydraulic fluid)	A, B, C, D

(*) For example, a commercial vehicle with two fuel tanks, each with 70-gallon capacity, has a total tank capacity of 140 gallons. Regardless of the amount of fuel discharged from these tanks, Enforcement Authority Option A does not apply. Details of exemptions for this type of discharge are found on page 17 (Section 62.1-44.34:23).

(**) For example, a commercial vehicle with two fuel tanks, each with 80-gallon capacity, has a total tank capacity of 160 gallons.

CLEANUP ENFORCEMENT AUTHORITY OPTIONS
(State and Federal)

The text for each Enforcement Authority Option is summarized here for clarity. A more complete text of each option, along with enforcement highlights, can be found on pages 12-20.

A. <u>Code of Virginia, Section 62.1-44.34:18</u>

The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. The person discharging or causing or permitting a discharge of oil shall take such action as may be necessary to report, contain, and clean up such discharge.

Enforced by VDEQ

A more complete text appears on pages 13-15. Details for exemptions are found on page 17 (Section 62.1-44.34:23).

B. <u>Clean Water Act, Section 311</u> (Oil Pollution Act of 1990 – OPA-90)

Addresses cleanup for oil spills that threaten navigable waters.

Enforced by EPA and USCG, and in some specific instances, DEQ

A more complete text appears on page 18.

C. <u>Code of Virginia, Section 15.2-900</u>

If a public nuisance presents an imminent and immediate threat to life or property, then the governing body of the county, city, or town may abate, raze or remove such public nuisance, and a county, city, or town may bring action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance. The term “nuisance” shall include, but not be limited to, dangerous or unhealthy substances which have escaped, spilled, been released, or which have been allowed to accumulate in or on any place.

Enforced by local government

A more complete text appears on page 19.

D. <u>Code of Virginia, Section 18.2-324</u>

Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the ***highway*** from such vehicle.

Enforced by local/state law enforcement officers

A more complete text appears on page 20.

LOCALLY AVAILABLE CONTRACTORS

Localities should establish a resource list with telephone numbers of locally available cleanup contractors. Knowledge of each contractor's capabilities and general response time should be determined in advance of need.

COMPANY NAME _____

ADDRESS _____

CITY/TOWN _____

REPRESENTATIVE _____

TELEPHONE — BUSINESS _____

EMERGENCY _____

COMPANY NAME _____

ADDRESS _____

CITY/TOWN _____

REPRESENTATIVE _____

TELEPHONE — BUSINESS _____

EMERGENCY _____

COMPANY NAME _____

ADDRESS _____

CITY/TOWN _____

REPRESENTATIVE _____

TELEPHONE — BUSINESS _____

EMERGENCY _____

CLEANUP ENFORCEMENT AUTHORITY

Code of Virginia, Section 27-15.1

Authority of chief or other officer in charge when answering alarm or operating at an emergency incident; penalty for refusal to obey orders.

While any fire department or fire company is in the process of answering an alarm or operating at an emergency incident where there is imminent danger or the actual occurrence of fire or explosion or the uncontrolled release of hazardous materials which threaten life or property and returning to the station, the chief or other officer in charge of such fire department or company at that time shall have the authority to: (i) maintain order at such emergency incident or its vicinity, (ii) direct the actions of the fire fighters at the incident, (iii) notwithstanding the provisions of §§46.2-888 through 46.2-891, keep bystanders or other persons at a safe distance from the incident and emergency equipment, (iv) facilitate the speedy movement and operation of emergency equipment and fire fighters, (v) cause an investigation to be made into the origin and cause of the incident, and (vi) until the arrival of a police officer, direct and control traffic in person or by deputy and facilitate the movement of traffic. The fire chief or other officer in charge shall display his fire fighter's badge, or other proper means of identification. Notwithstanding any other provision of law, this authority shall extend to the activation of traffic control signals designed to facilitate the safe egress and ingress of emergency equipment at a fire station. Any person or persons refusing to obey the orders of the fire chief or his deputies or other officer in charge at that time shall be guilty of a Class 4 misdemeanor. The chief or other officer in charge shall have the power to make arrests for violation of the provisions of this section. The authority granted under the provisions of this section may not be exercised to inhibit or obstruct members of law-enforcement agencies or rescue squads from performing their normal duties when operating at such emergency incident, nor to conflict with or diminish the lawful authority, duties and responsibilities of forest wardens, including but not limited to the provisions of Chapter 11 of Title 10.1. Personnel from the news media, such as the press, radio and television, when gathering the news may enter at their own risk into the incident area only when the officer in charge has deemed the area safe and only into those areas of the incident that do not, in the opinion of the officer in charge, interfere with the fire department or rescue workers dealing with such emergencies, in which case the chief or other officer in charge may order such person from the scene of the emergency incident.

CLEANUP ENFORCEMENT AUTHORITY

<u>Code of Virginia</u>, Section 62.1-44.34:18

Discharge of oil prohibited; liability for permitting discharge

A. The discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth is prohibited. For purposes of this section, discharges of oil into or upon state waters include discharges of oil that (i) violate applicable water quality standards or a permit or certificate of the Board or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

B. Any person discharging or causing or permitting a discharge of oil [editors note: see Note 1 below for a definition of oil as used in this section] into or upon state waters [editors note: see Note 2 below for a definition of state waters as used in this section], lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge shall, immediately upon learning of such discharge or threat of discharge, implement any applicable oil spill contingency plan approved under this article or take such other action as may be deemed necessary in the judgment of the Board to contain and clean up such discharge or threat of such discharge. In the event of such discharge or threat of discharge, if it cannot be determined immediately the person responsible therefor, or if the person is unwilling or unable to promptly contain and clean up such discharge or threat of discharge, the Board may take such action as is necessary to contain and clean up the discharge or threat of discharge, including the engagement of contractors or other competent persons.

Note 1 **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 (Section 62.1-44.34:14).**

Note 2 **State waters means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction (Section 62.1-44.3).**

C. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge and any operator of any facility, vehicle or vessel from which there is a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or from which there is a substantial threat of such discharge, shall be liable to:

<u>Code of Virginia</u>, Section 62.1-44.34:18 (continued)

1. The Commonwealth of Virginia or any political subdivision thereof for all costs and expenses of investigation, containment and cleanup incurred as a result of such discharge or threat of discharge, including, but not limited to, reasonable personnel, administrative, and equipment costs and expenses directly incurred by the Commonwealth or political subdivision, in and for preventing or alleviating damage, loss, hardship, or harm to human health or the environment caused or threatened to be caused by such discharge or threat of discharge;

2. The Commonwealth of Virginia or any political subdivision thereof for all damages to property of the Commonwealth of Virginia or the political subdivision caused by such discharge;

3. The Commonwealth of Virginia or any political subdivision thereof for loss of tax or other revenues caused by such discharge, and compensation for the loss of any natural resources that cannot be restocked, replenished or restored; and

4. Any person for injury or damage to person or property, real or personal, loss of income, loss of the means of producing income, or loss of the use of the damaged property for recreational, commercial, industrial, agricultural or other reasonable uses, caused by such discharge.

D. Notwithstanding any other provision of law, a person who renders assistance in containment and cleanup of a discharge of oil prohibited by this article or a threat of such discharge shall be liable under this section for damages for personal injury and wrongful death caused by that person's negligence, and for damages caused by that person's gross negligence or willful misconduct, but shall not be liable for any other damages or costs and expenses of containment and cleanup under this section that are caused by the acts or omissions of such person in rendering such assistance; however, such liability provision shall not apply to a person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems, discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, or causing or permitting a substantial threat of such discharge, or to such person's employee. Nothing in this article shall affect the right of any person who renders such assistance to reimbursement for the costs of the containment and cleanup under the applicable provisions of this article or the Federal Water Pollution Control Act, as amended, or any rights that person may have against any third party whose acts or omissions caused or contributed to the prohibited discharge of oil or threat of such discharge. In addition, a person, other than an operator, who voluntarily, without compensation, and upon the request of a governmental agency, assists in the containment or cleanup of a discharge of oil, shall not be liable for any civil damages resulting from any act or omission on his part in the course of his rendering such assistance in good faith; nor shall any person or any organization exempt from income taxation under § 501 (c) (3) of the Internal Revenue Code who notifies or assists in notifying the membership of such organization to assist in the containment or cleanup of a discharge of oil, voluntarily, without compensation, and upon the request of a government agency, be liable for any civil damages resulting from such notification rendered in good faith.

<u>Code of Virginia</u>, Section 62.1-44.34:18 (continued)

E. In any action brought under this article, it shall not be necessary for the Commonwealth, political subdivision or any person, to plead or prove negligence in any form or manner.

F. In any action brought under this article, the Commonwealth, political subdivision or any person, if a prevailing party, shall be entitled to an award of reasonable attorneys' fees and costs.

G. It shall be a defense to any action brought under subdivision C 2, C 3, or C 4 of this section that the discharge was caused solely by (i) an act of God, (ii) an act of war, (iii) a willful act or omission of a third party who is not an employee, agent or contractor of the operator, or (iv) any combination of the foregoing; however, this subsection shall not apply to any action brought against (a) a person or operator who failed or refused to report a discharge as required by § 62.1-44.34:19; or (b) a person or operator who failed or refused to cooperate fully in any containment and cleanup or who failed or refused to effect containment and cleanup as required by subsection B of this section.

H. In any action brought under subdivision C 2, C 3, or C 4 of this section, the total liability of a person or operator under this section for each discharge of oil or threat of such discharge shall not exceed the amount of financial responsibility required under §62.1-44.34:16 or $10,000,000, whichever is greater; however, there shall be no limit of liability imposed under this section: (a) if the discharge of oil or threat of such discharge was caused by gross negligence or willful misconduct on the part of the person or the operator discharging or causing or permitting discharge or threat of discharge or by an agent, employee or contractor of such person or operator, or by the violation of any applicable safety, construction or operation regulations by such person or operator or an agent, employee or contractor of such person or operator; or (b) if the operator or person discharging or causing or permitting a discharge or threat of discharge failed or refused to report the discharge as required by § 62.1-44.34:19, or failed or refused to cooperate fully in any containment and cleanup or to effect containment and cleanup as required by subsection B of this section.

I. An operator that incurs cost pursuant to subsection B shall have the right to recover all or part of such costs in an action for contribution against any person or persons whose acts or omissions caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate cost among the parties using such equitable factors as the court deems appropriate.

J. Any person or operator who pays costs or damages pursuant to subsection C shall have the right to recover all or part of such costs or damages in an action for contribution against any person or persons whose act or omission has caused or contributed to the discharge or threat of discharge. In resolving contribution claims under this article, the court may allocate costs or damages among the parties using such equitable factors as the court deems appropriate.

CLEANUP ENFORCEMENT AUTHORITY

Code of Virginia, Section 62.1-44.34:19

Reporting of discharge

A. Any person discharging or causing or permitting a discharge of oil into or upon state waters, lands, or storm drain systems within the Commonwealth or discharging or causing or permitting a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems within the Commonwealth, and any operator of any facility, vehicle or vessel from which there is a discharge of oil into state waters, lands, or storm drain systems, or from which there is a discharge of oil which may reasonably be expected to enter state waters, lands, or storm drain systems, shall, immediately upon learning of the discharge, notify the Board, the director or coordinator of emergency services appointed pursuant to §44-146.19 for the political subdivision in which the discharge occurs and any other political subdivision reasonably expected to be affected by the discharge, and appropriate federal authorities of such discharge. Notice will be deemed to have been given under this section for any discharge of oil to state lands in amounts less than twenty-five gallons if the record keeping requirements of subsection C of §62.1-44.34:19.2 have been met and the oil has been cleaned up in accordance with the requirements of this article.

B. Observations and data gathered as a result of the monthly and quarterly inspection activities required by §62.1-44.34:15.1 (1) (d) shall be maintained on site pursuant to §62.1-44.34:19.2, and compiled into a summary, on a form developed by the Board, such summary to be submitted to the Board annually on a schedule established by the Board. Should any such observations or data indicate the presence of petroleum hydrocarbons in ground water, the results shall be reported immediately to the Board and to the local director or coordinator of emergency services appointed pursuant to §44-146.19**.**

CLEANUP ENFORCEMENT AUTHORITY

Code of Virginia, Section 62.1-44.34:23

Exemptions

A. Nothing in this article [Editor's note: meaning 62.1-44.34:18 which appears on page 13 and 62.1-44.34:19 which appears on page 16] shall apply to: (i) normal discharges from properly functioning vehicles and equipment, marine engines, outboard motors or hydroelectric facilities; (ii) accidental discharges from farm vehicles or noncommercial vehicles; (iii) accidental discharges from the fuel tanks of commercial vehicles or vessels that have a fuel tank capacity of 150 gallons or less; (iv) discharges authorized by a valid permit issued by the Board pursuant to §62.1-44.15 (5) or by the United States Environmental Protection Agency; (v) underground storage tanks regulated under a state program; (vi) releases from underground storage tanks as defined in §62.1-44.34:8, regardless of when the release occurred; (vii) discharges of hydrostatic test media from a pipeline undergoing a hydrostatic test in accordance with federal pipeline safety regulations; or (viii) discharges authorized by the federal on-scene coordinator and the Executive Director or his designee in connection with activities related to the recovery of spilled oil where such activities are undertaken to minimize overall environmental damage due to an oil spill into or on state waters. However, the exception provided in clause (viii) shall in no way reduce the liability of the person who initially spilled the oil which is being recovered.

B. Notwithstanding the exemption set forth in clause (vi) of subsection A of this section, a political subdivision may recover pursuant to subsection C of §62.1-44.34:18 for a discharge of oil into or upon state waters, lands, or storm drain systems from an underground storage tank regulated under a state program at facilities with an aggregate capacity of one million gallons or greater.

CLEANUP ENFORCEMENT AUTHORITY

Federal Clean Water Act (excerpt from 33 USC 1321, Section 311):

(a) For the purposes of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act (b) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems;

(b) (3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act), where permitted under the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare or the environment of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

CLEANUP ENFORCEMENT AUTHORITY

Code of Virginia, Section 15.2-900

Abatement or removal of nuisances by localities; recovery of costs

In addition to the remedy provided by §48-5 and any other remedy provided by law, any locality may maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the locality may abate, raze, or remove such public nuisance, and a locality may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

The term "nuisance" includes, but is not limited to, dangerous or unhealthy substances which have escaped, spilled, been released or which have been allowed to accumulate in or on any place and all unsafe, dangerous, or unsanitary public or private buildings, walls, or structures which constitute a menace to the health and safety of the occupants thereof or the public. The term "responsible party" includes, but is not limited to, the owner, occupier, or possessor of the premises where the nuisance is located, the owner or agent of the owner of the material which escaped, spilled, or was released and the owner or agent of the owner who was transporting or otherwise responsible for such material and whose acts or negligence caused such public nuisance.

CLEANUP ENFORCEMENT AUTHORITY

Code of Virginia, Section 18.2-324

Throwing or depositing certain substances upon highway; removal of such substances

No person shall throw or deposit or cause to be deposited upon any highway any glass bottle, glass, nail, tack, wire, can, or any other substance likely to injure any person or animal, or damage any vehicle upon such highway, nor shall any person throw or deposit or cause to be deposited upon any highway any soil, sand, mud, gravel or other substances so as to create a hazard to the traveling public. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive, hazardous or injurious material shall immediately remove the same or cause it to be removed. Any person removing a wrecked or damaged vehicle from a highway [refer to §33.1-351] shall remove any glass or other injurious substance dropped upon the highway from such vehicle. Any persons violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

This section shall not apply to the use, by a law-enforcement officer while in the discharge of official duties, of any device designed to deflate tires. The Division of Purchase and Supply shall, pursuant to §2.1-446, set minimum standards for such devices and shall give notice of such standards to law-enforcement offices in the Commonwealth. No such device shall be used which does not meet or exceed the standards.

Code of Virginia, Section 33.1-351

Policy/Definitions

In order to promote the safety, convenience, and enjoyment of travel on and protection of the public investment in highways within this Commonwealth, to attract tourists and promote the prosperity, economic well-being, and general welfare of the Commonwealth, and to preserve and enhance the natural scenic beauty or aesthetic features of the highways and adjacent areas, the General Assembly declares it to be the policy of the Commonwealth that the erection and maintenance of outdoor advertising in areas adjacent to the rights-of-way of the highways within the Commonwealth shall be regulated in accordance with the terms of this article and regulations promulgated by the Commonwealth Transportation Board pursuant thereto.

The following terms, wherever used or referred to in this article, shall have the following meanings unless a different meaning clearly appears from the context:

"Highway" means every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this Commonwealth.

HOW TO CONTACT UNDERGROUND UTILITY COMPANIES

In order to avoid damage to underground utilities, every effort should be made to notify *"Miss Utility"* as soon as possible during emergency situations. These situations include the following:

1. Operations such as:

- Digging (hand digging or by mechanical equipment) such as that required to construct retention areas or diversions
- Placing ground rods during operations such as product transfer

2. Any incident that has the potential to damage underground utilities, such as:

- Chemical or oil spills in amounts that can soak into the soil to the depth of underground utilities
- Major mechanical impacts to the ground, such as train derailments or truck rollovers

Whenever there is any doubt regarding the potential impact of a hazardous materials incident on underground utilities, contact "Miss Utility (www.va811.com)."

STEP 1 **Contact the appropriate "Miss Utility" operator as indicated below:**

Miss Utility of Virginia (800) 552-7000 or dial 8-1-1

STEP 2 **Inform the operator of "emergency notification" and provide the following information:**

- Exact location of incident (longitude/latitude or "ADC" map grids)
- Type of incident, actions planned (digging, use of ground rods, extensive soil contamination, etc.)
- Best access route(s) to the incident
- Location of the incident command post
- Incident point of contact (POC) and call-back number

STEP 3 Request the operator to have each utility locator contact the Incident POC to confirm their receipt of the notification and to provide their ETA (estimated time of arrival) to the site.

Be advised that some locators will be able to confirm via telephone to the Incident POC that their utilities are not affected.

The Virginia "Underground Utility Damage Prevention Act" (the "Miss Utility" law) normally requires 48-hour notification prior to excavation. However, an exemption is allowed during emergency situations as described in Section 56-265.15:1, item 4, of the law.

This section refers to emergency situations, as defined in Section 56-265.15, as "a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services." It should be noted that the exemption requires that all reasonable precaution has been taken to protect the underground utility lines. Reasonable precaution includes efforts to determine the presence of underground utilities based upon various aboveground indicators such as:

Utility locator signs	Manhole covers
Transformer pads/pedestals	Newly developed/refurbished areas
Valve boxes	Utility poles (with obvious connections to underground lines)

GUIDELINES
FOR THE MITIGATION OF
ACCIDENTAL DISCHARGES
OF MOTOR VEHICLE FLUIDS
(non-cargo)

Prepared by

VIRGINIA DEPARTMENT OF EMERGENCY MANAGEMENT

In cooperation with

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

VIRGINIA DEPARTMENT OF TRANSPORTATION

VIRGINIA STATE POLICE

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Virginia Department of Emergency Management

JANUARY 2014