



Virginia

**Regulatory  
Town Hall**

**Periodic Review and  
Notice of Intended Regulatory Action  
Agency Background Document**

<b>Agency Name:</b>	Department of Environmental Quality
<b>VAC Chapter Number:</b>	9 VAC 25-91-10 et seq.
<b>Regulation Title:</b>	Facility and Above ground Storage Tank (AST) Regulation
<b>Action Title:</b>	AST Regulation
<b>Date:</b>	September 24, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process. This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

**Summary**

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

The purpose of this regulation is to: (i) establish requirements for registration of facilities and individual petroleum Aboveground Storage Tanks located within the Commonwealth; (ii) develop standards and procedures to prevent pollution from new and existing ASTs; and (iii) provide requirements for the development of facility oil discharge contingency plans for facilities with an aggregate capacity of 25,000 gallons or greater of oil.

**Basis**

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

State law mandates that the Board maintain an inventory of AST facilities and is authorized to develop registration regulations for that purpose. The statute does not specify minimum regulation requirements.

State law requires that AST facility operators file and obtain Board approval of an Oil Discharge Contingency Plan (ODCP) as a condition of operation for the facility, and requires that the ODCP conform to requirements and standards determined by the Board. The statute does not specify minimum ODCP requirements.

State law mandates that the Board adopt regulations for pollution prevention, and specifies minimum requirements for that purpose. The pollution prevention section of the regulation includes all of the minimum requirements specified in the law, and also requires that the operator maintain in good condition the "secondary containment" which is specified in the operator's approved ODCP.

There is no direct mandate for AST regulations in Federal environmental statutes. However federal regulations (such as 40 CFR 112, and 29 CFR 1910.106) and industry standards (such as API 653 and API 570) contain quite a number of requirements related to AST construction and operation. Many of those federal requirements are similar in their purpose/effect to the requirements envisioned by the State law's pollution prevention and ODCP mandates. Therefore, every attempt has been made to make the requirements of the State's AST regulations consistent with requirements already contained in those federal regulations and industry standards.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

Only one public comment was received as the result of the Notice of Periodic Review published in the Virginia Register. The comment requested that the current regulatory language be amended to exempt above-grade vaulted ("double-walled") ASTs from all requirements of Part III (the Pollution Prevention section) of the Virginia AST regulations. This request was made apparently because it is difficult or impossible for the commenter to inspect his tanks internally in the manner specified by the API 653 standard which is referenced in Part III. However, it is not necessary to change the regulation in order to satisfy the commenter's concerns. The regulation excludes ASTs that have a storage capacity of 12,000 gallons or less from the internal inspection requirement and, for ASTs that are greater than 12,000-gallon capacity, the regulations allow "other methods" of inspection to be approved by the Board. It also includes a provision that allows tank owners to request a variance from the requirement.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

The primary goal of this regulation is to develop the standards and procedures necessary for facility operators to prevent the discharge of oil to state waters, lands and storm drain systems from new and existing aboveground storage tanks. These standards and procedures incorporate accepted codes, industry practices and standards. The regulation establishes the requirements for

facility contingency plans. Plans must address the effect of oil discharges on the environment and public health and safety. The oil discharge contingency plans will ensure that facility operators can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, cleanup and mitigate an oil discharge within the shortest feasible time. The regulation provides registration requirements for facilities and aboveground storage tanks that contain oil. The regulation establishes fees for registration from \$25 for a single AST to a maximum fee of \$100 for multiple facilities and ASTs. The Groundwater Characterization Study (GCS) and GCS well monitoring requirements of the regulations apply to individual ASTs with an aboveground storage capacity of 1 million gallons or greater. This regulation continues to protect public health and safety by implementation of measures to prevent and mitigate the effects of catastrophic oil spills. The regulation has no impact on the institution of family and family stability. The regulation is clearly written and easily understandable, however, we are proposing some minor changes to improve its clarity where potential interpretation issues have been identified.

### Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

Based on current statutes, there are no alternatives to this regulation that are less burdensome. DEQ will evaluate legislative amendments to further lessen the administrative requirements of this regulation on the regulated community.

### Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

The agency is recommending the regulation be amended. The recommended amendments are being made to clarify the requirements set forth in statute and current implementation of the program. The proposed recommendations are intended to make the regulatory requirements more easily understandable by the regulated community.

### Substance

*Please detail any changes that would be implemented.*

9 VAC 25-91-10. Definitions.

- The definition of “local building official” is amended to “local building code official”. This amendment reflects the language used in the 1996 edition of the Uniform Statewide Building Code (USBC) as amended 9/15/00.

~~“Local building official” means the person authorized by the Commonwealth to enforce the provisions of the Uniform Statewide Building Code (USBC).~~ “Local building code official” means the officer or other designated authority charged with the administration and enforcement of the USBC or a duly authorized representative.”

- The definition of “oil” is amended to add (60° F at 14.7 pounds per square inch absolute) after the word liquid. This is to clarify the term liquid. The word petroleum is added before hydrocarbon for clarity. Without this, the term liquid hydrocarbon may be interpreted to include products such as milk, honey, ink and other products that the program does not regulate.

“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 (60° F at 14.7 pounds per square inch absolute) petroleum hydrocarbons regardless of specific gravity.

- The definition of “storage capacity” is amended to remove the term “container” from the definition. Containers are not regulated and eliminating the term from the definition will clarify that containers are not regulated.

“Storage capacity” means the total capacity of an AST ~~or a container~~, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with this chapter has no storage capacity.

#### 9 VAC 25-91-100. Registration requirements.

- Amend section G. to reflect the change to the definition of “local code official”. The section currently uses the term “local code officials.” The phrase “or its designee” is added after Department of General Services (DGS) to allow the DGS to designate the responsibility if they so choose.

“G. A facility or AST installed after the effective date of this chapter, including an AST or facility operated by the federal government, shall not be registered without either (i) a review by the department or the permits, inspection, and certification of use required in accordance with the provisions of the Uniform Statewide Building Code, the BOCA National Building Code and NFPA Code and obtained by the owner or a duly authorized representative from the local building code officials or their designee or (ii) an inspection by the department. In the case of a regulated AST operated by the Commonwealth, the Department of General Services or its designee, shall function as the local building code official in accordance with § 36-98.1 of the Code of Virginia.

#### 9 VAC 25-91-120. Aboveground storage tank closure.

- Amend section A.2. to reflect the amendment to the term ‘local building official’ and add “or its designee” to DGS. This provides consistency through the regulation.

2. In the case of a regulated AST operated by the Commonwealth, the Department of General Services or its designee shall function as the local building code official in accordance with § 36-98.1 of the Code of Virginia.

- Amend section C.3. to include an assessment of the AST site to be conducted when an AST is relocated, temporarily closed or permanently closed. This will clarify the requirements regarding when an assessment is to be conducted.

3. An assessment of the AST site shall be conducted prior to completion of AST relocation or closure (temporary or permanent).~~permanent closure operations.~~

- Amend section D to include an assessment of the AST site to be conducted when an AST is relocated, temporarily closed or permanently closed. This will clarify the requirements regarding when an assessment is to be conducted and ensure consistency with other sections within the requirements.

D. When deemed necessary by the board, the owner or a duly authorized representative of a facility or an AST that was relocated, or permanently closed (temporarily or permanently) prior to the effective date of this chapter shall assess the site and close the AST in accordance with the requirements of this section.

9 VAC 25-91-130. Pollution prevention standards and procedures

- Amend subsections A.4 and B.2. Secondary Containment to “Method used to limit the outflow of oil”

Part A

4. ~~Secondary containment.~~ Method used to limit and contain the outflow of oil.

~~Each secondary containment dike or berm shall be maintained and evaluated or certified with respect to its compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR 1910.106.—The operator shall maintain, monitor, and keep records of the method used to limit and contain the outflow of oil for the assessment of the worse case discharge as required by 9 VAC 25-91-170 A 11 and contained in the facility’s approved ODCP. An evaluation and certification of the method used to limit and contain the outflow of oil in the assessment of the worst case discharge shall be performed. The operator shall have this evaluation ~~or~~ and certification performed on or before June 30, 1998 and every 10 years thereafter (unless otherwise exempted), by a professional engineer (PE) licensed in the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the Board.~~

- Operators of facilities exempted under § 62.1-44.34: 17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation and certification completed within five years after the effective date of this chapter and every 10 years thereafter.

- b. Operators of a newly installed AST shall have this evaluation and certification completed prior to being placed into service and every 10 years thereafter.

The method shall be evaluated and certified to be in compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR Part 1910.106.

#### Part B

2. ~~Secondary containment.~~ Method used to limit and contain the outflow of oil.

~~Each secondary containment dike or berm shall be maintained and evaluated or certified with respect to its compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR 1910.106. The operator shall maintain, monitor, and keep records of the method used to limit and contain the outflow of oil for the assessment of the worst case discharge as required by 9 VAC 25-91-170 A 11 and contained in the facility's approved ODCP. An evaluation of and certification of the method used to limit and contain the outflow of oil in the assessment of the worst case discharge shall be performed.~~ The operator shall have this evaluation ~~of~~ and certification performed on or before June 30, 1998 and every 10 years thereafter (unless otherwise exempted), by a professional engineer (PE) licensed in the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the Board.

- a. Operators of facilities exempted under § 62.1-44.34: 17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation and certification completed within five years after the effective date of this chapter and every 10 years thereafter.
- b. Operators of a newly installed AST shall have this evaluation and certification completed prior to being placed into service and every 10 years thereafter.

The method shall be evaluated and certified to be in compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR Part 1910.106.

- Amend A7 & B5 to include 14 days as an alternative time limit for facility inspections that are not conducting normal operations on a daily basis.

#### Part A

7. Visual daily inspection and weekly inspections.

a. The operator or a duly authorized representative shall conduct a daily visual inspection ~~for on~~ each day of in which normal operation occurs, but no less frequently than once every 14 days, in the areas of the facility where this chapter applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notification in the facility records. This visual inspection shall include the following:...

b. The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every 14 days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in the weekly inspection checklist subdivision of this section. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The weekly checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.

## Part B

### 5. Visual daily inspection and weekly inspections.

a. The operator or a duly authorized representative shall conduct a daily visual inspection ~~for~~ on each day of in which normal operation occurs, but no less frequently than once every 14 days, in the areas of the facility where this chapter applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notification in the facility records. This visual inspection shall include the following:...

b. The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every 14 days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in the weekly inspection checklist subdivision of this section. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The weekly checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.

### 9 VAC 25-91-170. Contingency plan requirements and approval.

- Amend section A.11 as follows:

11. Assessment of the worst case discharge, including measures to limit and contain the outflow of oil, response strategy and operational plan. For the purpose of this chapter, the worst case discharge is the instantaneous release of the volume of the largest tank on the facility (125% of the volume of the largest tank for facilities with multiple tanks within a single containment dike) during adverse weather conditions. Facilities shall take into consideration that due to hydraulic pressure of the release, the secondary containment will not contain this volume in its entirety. The worst case discharge for a pipeline shall be based upon the volume of a discharge calculated using the maximum pressure, velocity, and elevation, and the largest pipe size and pipeline location. If facility design and operation indicates that this worst case discharge scenario does not meet the intent of this chapter, the board may require submission of other worst case scenarios on a facility-specific basis.

a. An evaluation and certification of the method used to limit and contain the outflow of oil in the assessment of the worst case discharge shall be performed. The operator shall have this evaluation and certification performed on or before June 30, 1998 and every 10 years thereafter (unless otherwise exempted), by a professional engineer (PE) licensed in

the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the Board.

b. Operators of facilities exempted under § 62.1-44.34: 17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation and certification completed within five years after the effective date of this chapter and every 10 years thereafter.

c. Operators of a newly installed AST shall have this evaluation and certification completed prior to being placed into service and every 10 years thereafter.

The method shall be evaluated and certified to be in compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR Part 1910.106. The operator shall have this evaluation and certification performed and shall submit it as part of the ODCP. The method used to limit and contain the outflow of oil shall be maintained as part of the approval of the ODCP. A change to the method approved shall be considered a significant change to the ODCP.

- Amend section E. to include the method approved as a significant change to the ODCP.

6. A change to the method approved to limit and contain the outflow of oil in the assessment of the worst case discharge.

**Family Impact Statement**

*Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulation does not a direct impact on the institution of the family and family stability.

**Purpose\***

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The primary goal for amending this regulation is to improve clarity and make the requirements more easily understandable by the individuals and entities affected and to bring applicable portions of the regulation into conformity with related laws and regulations.

**Need\***

*Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied*

This regulation continues to protect public health and safety by implementation of measures to prevent the discharge of oil to state waters, lands and storm drain systems from new and existing aboveground storage tanks as well as to prevent and mitigate the effects of catastrophic oil spills.



There are no potential issues that may need to be addressed as a result of the proposed amendments to the regulation.

### Substance\*

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.*

#### 9 VAC 25-91-10. Definitions.

- The definition of “local building official” is amended to “local building code official”. This amendment reflects the language used in the 1996 edition of the Uniform Statewide Building Code (USBC) as amended 9/15/00.

~~“Local building official” means the person authorized by the Commonwealth to enforce the provisions of the Uniform Statewide Building Code (USBC).~~ “Local building code official” means the officer or other designated authority charged with the administration and enforcement of the USBC or a duly authorized representative.”

- The definition of “oil” is amended to add (60° F at 14.7 pounds per square inch absolute) after the word liquid. This is to clarify the term liquid. The word petroleum is added before hydrocarbon for clarity. Without this, the term liquid hydrocarbon may be interpreted to include products such as milk, honey, ink and other products that the program does not regulate.

“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 (60° F at 14.7 pounds per square inch absolute) petroleum hydrocarbons regardless of specific gravity.

- The definition of “storage capacity” is amended to remove the term “container” from the definition. Containers are not regulated and eliminating the term from the definition will clarify that containers are not regulated.

~~“Storage capacity” means the total capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with this chapter has no storage capacity.~~

#### 9 VAC 25-91-100. Registration requirements.

- Amend section G. to reflect the change to the definition of “local code official”. The section currently uses the term “local code officials.” The phrase “or its designee” is added after Department of General Services (DGS) to allow the DGS to designate the responsibility if they so choose.

“G. A facility or AST installed after the effective date of this chapter, including an AST or facility operated by the federal government, shall not be registered without either (i) a review by the department or the permits, inspection, and certification of use required in accordance with the provisions of the Uniform Statewide Building Code, the BOCA National Building Code and NFPA Code and obtained by the owner or a duly authorized representative from the local building code officials or their designee or (ii) an inspection by the department. In the case of a regulated AST operated by the Commonwealth, the Department of General Services or its designee, shall function as the local building code official in accordance with § 36-98.1 of the Code of Virginia.

9 VAC 25-91-120. Aboveground storage tank closure.

- Amend section A.2. to reflect the amendment to the term ‘local building official’ and add ‘or its designee’ to DGS. This provides consistency through the regulation.

2. In the case of a regulated AST operated by the Commonwealth, the Department of General Services or its designee shall function as the local building code official in accordance with § 36-98.1 of the Code of Virginia.

- Amend section C.3. to include an assessment of the AST site to be conducted when an AST is relocated, temporarily closed or permanently closed. This will clarify the requirements regarding when an assessment is to be conducted.

3. An assessment of the AST site shall be conducted prior to completion of AST relocation or closure (temporary or permanent).~~permanent closure operations.~~

- Amend section D to include an assessment of the AST site to be conducted when an AST is relocated, temporarily closed or permanently closed. This will clarify the requirements regarding when an assessment is to be conducted and ensure consistency with other sections within the requirements.

D. When deemed necessary by the board, the owner or a duly authorized representative of a facility or an AST that was relocated, or permanently closed (temporarily or permanently) prior to the effective date of this chapter shall assess the site and close the AST in accordance with the requirements of this section.

9 VAC 25-91-130. Pollution prevention standards and procedures

- Amend subsections A.4 and B.2. Secondary Containment to “Method used to limit the outflow of oil”

Part A

4. ~~Secondary containment.~~ Method used to limit and contain the outflow of oil.

~~Each secondary containment dike or berm shall be maintained and evaluated or certified with respect to its compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR 1910.106. The operator shall maintain, monitor, and keep records of the method used to limit and contain the outflow of oil for the assessment of the worse case discharge as required by 9 VAC 25-91-170 A 11 and contained in the facility's approved ODCP. An evaluation and certification of the method used to limit and contain the outflow of oil in the assessment of the worst case discharge shall be performed. The operator shall have this evaluation ~~or~~ and certification performed on or before June 30, 1998 and every 10 years thereafter (unless otherwise exempted), by a professional engineer (PE) licensed in the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the Board.~~

- c. Operators of facilities exempted under § 62.1-44.34: 17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation and certification completed within five years after the effective date of this chapter and every 10 years thereafter.
- d. Operators of a newly installed AST shall have this evaluation and certification completed prior to being placed into service and every 10 years thereafter.

The method shall be evaluated and certified to be in compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR Part 1910.106.

## Part B

### 2. ~~Secondary containment.~~ Method used to limit and contain the outflow of oil.

~~Each secondary containment dike or berm shall be maintained and evaluated or certified with respect to its compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR 1910.106. The operator shall maintain, monitor, and keep records of the method used to limit and contain the outflow of oil for the assessment of the worse case discharge as required by 9 VAC 25-91-170 A 11 and contained in the facility's approved ODCP. An evaluation ~~or~~ and certification of the method used to limit and contain the outflow of oil in the assessment of the worst case discharge shall be performed. The operator shall have this evaluation ~~or~~ and certification performed on or before June 30, 1998 and every 10 years thereafter (unless otherwise exempted), by a professional engineer (PE) licensed in the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the Board.~~

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- b. Operators of a newly installed AST shall have this evaluation and certification completed prior to being placed into service and every 10 years thereafter.

The method shall be evaluated and certified to be in compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR Part 1910.106.

- Amend A7 & B5 to include 14 days as an alternative time limit for facility inspections that are not conducting normal operations on a daily basis.

## Part A

## 7. Visual daily inspection and weekly inspections.

a. The operator or a duly authorized representative shall conduct a daily visual inspection ~~for~~ on each day of in which normal operation occurs, but no less frequently than once every 14 days, in the areas of the facility where this chapter applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notification in the facility records. This visual inspection shall include the following:...

b. The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every 14 days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in the weekly inspection checklist subdivision of this section. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The weekly checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.

## Part B

## 5. Visual daily inspection and weekly inspections.

a. The operator or a duly authorized representative shall conduct a daily visual inspection ~~for~~ on each day of in which normal operation occurs, but no less frequently than once every 14 days, in the areas of the facility where this chapter applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notification in the facility records. This visual inspection shall include the following:...

b. The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every 14 days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in the weekly inspection checklist subdivision of this section. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The weekly checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.

## 9 VAC 25-91-170. Contingency plan requirements and approval.

- Amend section A.11 as follows:

11. Assessment of the worst case discharge, including measures to limit and contain the outflow of oil, response strategy and operational plan. For the purpose of this chapter, the worst case discharge is the instantaneous release of the volume of the largest tank on the facility (125% of the volume of the largest tank for facilities with multiple tanks within a single containment dike) during adverse weather conditions. Facilities shall take into consideration that due to hydraulic

pressure of the release, the secondary containment will not contain this volume in its entirety. The worst case discharge for a pipeline shall be based upon the volume of a discharge calculated using the maximum pressure, velocity, and elevation, and the largest pipe size and pipeline location. If facility design and operation indicates that this worst case discharge scenario does not meet the intent of this chapter, the board may require submission of other worst case scenarios on a facility-specific basis.

a. An evaluation and certification of the method used to limit and contain the outflow of oil in the assessment of the worst case discharge shall be performed. The operator shall have this evaluation and certification performed on or before June 30, 1998 and every 10 years thereafter (unless otherwise exempted), by a professional engineer (PE) licensed in the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the Board.

b. Operators of facilities exempted under § 62.1-44.34: 17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have this evaluation and certification completed within five years after the effective date of this chapter and every 10 years thereafter.

c. Operators of a newly installed AST shall have this evaluation and certification completed prior to being placed into service and every 10 years thereafter.

The method shall be evaluated and certified to be in compliance with the applicable requirements of 40 CFR Part 112 (1997), NFPA 30, and 29 CFR Part 1910.106. The operator shall have this evaluation and certification performed and shall submit it as part of the ODCP. The method used to limit and contain the outflow of oil shall be maintained as part of the approval of the ODCP. A change to the method approved shall be considered a significant change to the ODCP.

- Amend section E. to include the method approved as a significant change to the ODCP.
6. A change to the method approved to limit and contain the outflow of oil in the assessment of the worst case discharge.

### Alternatives\*

*Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action, and the reasoning by which the agency has rejected any of the alternatives considered.*

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Based on current statutes, there are no alternatives to this regulation that are less burdensome. DEQ will evaluate legislative amendments to further lessen the administrative requirements of this regulation on the regulated community.

**Public Participation\***

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.*

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The Board is seeking comments on the intended regulatory action, including the costs and benefits of the alternatives stated in this notice or other alternatives and the impact on farm or forest lands. Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period and should be sent to Sam Lillard, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, phone (804) 698-4276, fax (804) 698-4266, or email [slillard@deq.state.va.us](mailto:slillard@deq.state.va.us).

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Oral comments may be submitted at that time.

**Participatory Approach\***

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The Board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.

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