



Periodic Review / Retain Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC25-101
Regulation title	Tank Vessel Discharge Contingency Plan and Financial Responsibility Regulation
Document preparation date	January 8, 2014

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

Section 62.1-44.15 of the Code of Virginia requires operators of tank vessels transporting or transferring oil as cargo upon state waters to develop contingency plans. Section 62.1-44.16 of the Code of Virginia requires financial responsibility to be provided by an operator of a tank vessel demonstrating the owner's financial stability to conduct a proper response to a discharge of oil. The State Water Control Board adopted these regulations to implement these statutory requirements.

The federal Oil Pollution Act of 1990 also places requirements on vessels transporting oil and requires vessels to have vessel response plans and to obtain a Certificate of Financial Responsibility from the U.S. Coast Guard. Virginia's statute recognizes the requirements of the Oil Pollution Control Act of 1990 and deems vessels in compliance with Virginia requirements if they have a vessel response plan approved by the U.S. Coast Guard and/or a Certificate of Financial Responsibility, as applicable.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were

rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Based on current statute, there are no alternatives to this regulation that are less burdensome. The statute recognizes that vessels that have a vessel response plan approved by the U.S. Coast Guard and a Certificate of Financial Responsibility as required by the Oil Pollution Control Act of 1990 are in compliance with these regulations. By complying with specific provisions of the Oil Pollution Control Act of 1990, a vessel operator is complying with Virginia's regulations, and no additional action is required by the vessel operator. The regulation as currently written is the least burdensome alternative to ensuring vessels have response plans to address spills and are financially able to pay for a response to a spill of oil, should one occur.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comments were received during the public comment period. An informal advisory group was not formed to assist with the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth, ensuring that owners and operators comply with good hazardous waste management and control practices.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

In general, this regulation satisfies the provisions of the law and legally binding state requirements, and is effective in meeting its goals. There are some changes however that are needed to the regulations and the board plans to undertake a regulatory amendment in the near future to make the regulations more closely mirror the requirements outlined in state statute.

The regulation currently states that the board may revoke approval of an Oil Discharge Contingency Plan when the tank vessel is no longer in operation. Since this provision is not listed as a reason the board may revoke the approval, the Board plans to remove this provision from the regulation.

One section of the regulation is no longer needed. Section 70 of the regulation details the periodic review to be conducted on the regulation. Periodic reviews are currently conducted as required by Executive Order 14 (2010). This section of the regulation is no longer needed and the agency will undertake a regulatory action in the near future to remove section 70 from the regulation.

The agency also plans to make editorial corrections to the regulation.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The primary goal of this regulation is to protect the environment from discharges of oil from tank vessels by establishing procedures and requirements for operators to respond to the threat of an oil discharge and to contain, clean up and mitigate a discharge within the shortest feasible time, as well as demonstrate adequate financial responsibility to cover the costs of clean up and the liabilities for damages specified in the law.

The federal Oil Pollution Act of 1990 contains many of the same requirements as this regulation. State statute and regulation recognizes that an operator’s compliance with the requirements of the Oil Pollution Act of 1990 complies with Virginia’s statutory and regulatory requirements. This minimizes the impact that these regulations have on the regulated community, and allows for the regulated community to comply with federal requirements as they operate through multiple jurisdictions.

Any changes the Board would propose to the regulations to lessen the burden on small businesses would not be realized by small businesses since they would still be required by federal law to meet existing federal requirements.

Family impact

Please provide an analysis of the regulation’s impact on the institution of the family and family stability.

This regulation does not impact the institution of the family or family stability.