



Periodic Review / Retain Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC25-590
Regulation title	Petroleum Underground Storage Tank Financial Responsibility Requirements
Document preparation date	January 10, 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.

The legal basis for the regulations for Petroleum Underground Storage Tank Financial Responsibility Requirements, 9 VAC 25-590, is the State Water Control Law (Title 62.1, Chapter 3.1, Articles 9 and 10 of the Code of Virginia). Specifically, § 62.1-44.34:9(8) authorizes the State Water Control Board to promulgate such regulations as may be necessary to carry out its powers and duties with regard to USTs in accordance with federal laws and regulations. Further, § 62.1-44.34:12(A) of the State Water Control Law provides the direct authority to the State Water Control Board to promulgate regulations that conform to the federal UST financial responsibility requirements of 42 U.S.C § 6991b (d) and any regulations adopted thereunder.

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.

The regulation provides financial responsibility requirements and different types of financial mechanisms which may be used to cover these responsibilities. The Board recently identified an additional financial mechanism that should be added to the regulations for owners/operators to use to provide financial assurance. The Board added the ability for owners/operators to use a certificate of deposit to provide financial assurance which provides more choices to owners/operators concerning mechanisms for providing financial assurance in October 2013.

States have the option of seeking delegation from EPA for the Underground Storage Tank Regulations. Virginia was granted state program approval from EPA for the UST program in 1998. By having a state delegated program, owners/ operators interact directly with Virginia DEQ staff instead of EPA staff. Owners/operators benefit from operating in Virginia since they are only required to interact with one set of laws and regulations (Virginia laws and requirements). One alternative considered was returning the UST program to EPA for them to administer in Virginia. Owners/operators would then be required to comply with both federal and state laws and regulations and would be inspected by both federal and state agencies which may have different regulatory requirements. This option was rejected since it would place more regulatory burden on owners/operators.

Virginia's UST program greatly benefits owners/operators in the state by providing assistance with demonstrating financial assurance. Virginia is one of 36 states that has established a state UST financial assurance fund that assists owners/ operators with complying with federal UST financial assurance requirements. Virginia has established the Virginia Petroleum Storage Tank Fund (Fund) which assists owners/operators with demonstrating financial responsibility. Owners/operators use the Fund in combination with another mechanism to demonstrate financial responsibility. Without the use of the Fund, most owners/operators would be required to demonstrate as much as \$1,000,000. One alternative considered would be to require financial assurance to be provided entirely by owners/operators. This alternative was rejected since it conflicts with the provisions in state statute that allows use of the fund and it would also be burdensome on owners/operators to demonstrate financial assurance solely through standard mechanisms.

The Board was unable to identify any viable alternatives and this regulation has been created to be as least intrusive and costly for small businesses. The regulations were recently modified to include the use of a Certificate of Deposit as an additional option for providing financial assurance.

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.

This regulation satisfies the provisions of the law and legally binding state requirements, and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

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 regulation provides financial responsibility requirements and different types of financial mechanisms which may be used to cover these responsibilities. Financial assurance needs to be provided by owners/operators to ensure that owners/operators will be able to clean up any releases of petroleum that may occur from USTs.

Virginia's regulations are based on federal regulations; however, state regulations provide more flexibility to owners/and operators. State regulations allow certificate of deposits (CD) to be used to provide financial assurance. Federal regulations do not specifically allow CDs to be used to demonstrate financial assurance; however, EPA granted Virginia approval to include the CD as an option. Virginia has established the Virginia Petroleum Storage Tank Fund (Fund) which assists owners/operators with demonstrating financial responsibility. Owners/operators use the Fund in combination with another mechanism to demonstrate financial responsibility. Without the use of the Fund, most owners/operators would be required to demonstrate as much as \$1,000,000 which would be burdensome, especially on small businesses. Allowing the Fund to be used to demonstrate a portion of the owner's/operator's financial assurance greatly reduces the regulatory burden on owners/operators.

The regulations were last amended in October 2013 to include CDs as an acceptable mechanism for providing financial assurance. The addition of the option to use a CD as a mechanism for providing financial assurance benefits owners/operators by allowing them to utilize a mechanism that a third party does not charge a fee to administer. Previously owners/operators using a letter of credit (LOC) were

assessed fees from third parties to maintain this mechanism, and were frequently required to have a CD with the third party in order to receive the LOC. This change revised the regulations to address changes that had occurred in the banking industry.

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.