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Periodic Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-91
Regulation title	Facility and Aboveground Storage Tank (AST) Regulation
Date this document prepared	February 27, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

AST- Aboveground Storage Tank

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Section 62.1-44.34:15.1 of the Code of Virginia directs the State Water Control Board to adopt regulations concerning aboveground storage tanks (AST). The statute specifically directs the board to adopt regulations with different regulatory requirements based on the aggregate capacity of the tanks. The State Water Control Board adopted this regulation to comply with this statutory requirement.

Section 62.1-44.34:19.1 of the Code of Virginia requires Board to develop an inventory of facilities with an aboveground storage capacity of more than 1320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil. The Board is authorized by statute to develop regulations concerning the registration of these tanks.

Section 62.1-44.34:15 of the Code of Virginia requires facilities to provide an Oil Discharge Contingency Plan to the Department for approval. These plans detail actions that will be taken by the operator in the event an oil spill occurs.

There is no direct mandate for AST regulations in federal law; however, federal regulations (such as 40 CFR Part 112 (Oil Pollution Prevention), and 29 CFR 1910.106 (Occupational Safety and Health

Regulations) and industry standards (such as API 653 and API 570) contain 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's Pollution Prevention Law and Oil Discharge Contingency Plan mandates. 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.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

This regulation has been adopted by the State Water Control Board as required by §62.1-44.34:15.1 of the Code of Virginia. The statute specifically directs the board to adopt regulations with different regulatory requirements based on the aggregate capacity of the tanks. One alternative that was considered and rejected was to regulate all tanks in the same manner. This alternative would have been inconsistent with the requirements of §62.1-44.34:15.1 of the Code of Virginia.

Another alternative considered was the adoption of requirements that are different from the standards recommended by the National Fire Protection Association or other industry practices or standards. Virginia statute (§62.1-44.34:15.1) requires the regulations to be consistent with the codes and standards recommended by the National Fire Protection Association and requires the regulations to incorporate accepted industry practices and standards. Adopting alternative standards or requirements would not be consistent with the requirements of Virginia statute; therefore, this alternative was rejected.

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. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

An informal advisory group was not formed for the purpose of this periodic review. No comments were received during the public comment period.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety and welfare and is clearly written and easily understandable. The regulation protects the environment and public health and safety from discharges of oil by providing procedures and requirements for registering tanks, developing facility and tank vessel oil discharge contingency plans and establishing pollution prevention standards. The regulation incorporates standards recommended by the National Fire Protection Association or other industry practices or standards. The industry practices and standards are technical in nature; however, the regulated community is familiar with the technical requirements and industry standards.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation continues to be needed and is being retained without changes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include 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, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

This regulation is required by §62.1-44.34:15.1 of the Code of Virginia and the regulation continues to be needed. The regulation establishes requirements for registration of facilities and individual ASTs, includes standards and procedures for operators of certain facilities relating to pollution prevention, and provides requirements for oil discharge contingency plans.

No public comments were received during the public comment period.

The regulation contains industry practices and standards which are technical in nature; however the regulated community is familiar with the requirements.

There is no direct mandate for aboveground storage tank regulations in federal law; however, federal regulations (such as 40 CFR Part 112 (Oil Pollution Prevention), and 29 CFR 1910.106 (Occupational Safety and Health Regulations) and industry standards (such as API 653 and API 570) contain 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's Pollution Prevention Law and Oil Discharge Contingency Plan mandates. Every attempt has been made to make the requirements of the State's aboveground storage tank regulations consistent with requirements already contained in those federal regulations and industry standards.

This regulation was last adopted in 2015. This regulation is necessary for the protection of public health, safety and welfare and the regulation will be retained.