

Office of Regulatory Management
Economic Review Form

Agency name	Virginia Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-590
VAC Chapter title(s)	Petroleum Underground Storage Tank Financial Responsibility Requirements
Action title	Periodic Review
Date this document prepared	June 19, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Periodic Review

Agency Note: As this action involves a Periodic Review, Tables, 1a, 1b, and 1c have not been completed pursuant to the ORM Regulatory Economic Analysis Manual.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Currently, 86 localities in Virginia operate regulated USTs. A regulated UST is defined as any one or combination of tanks (including underground pipes connected thereto) that are used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% more beneath the surface of the ground.</p> <p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>The direct costs to local partners associated with this regulation are the costs expended to demonstrate that the local government underground storage tank (UST) owner or operator has the financial capability to cover a portion of costs associated with cleaning up a petroleum release from an UST. The Virginia Petroleum Storage Tank Fund (“the Fund”)</p>
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exists to assist tank owners with the cost of cleaning up a petroleum release and addressing certain third party tort actions that may arise from a release. However, tank owners, by law, are responsible for a portion of these costs before the Fund will assist.

This regulation sets out the methods a tank owner or operator may use to demonstrate financial capability. The regulation allows self insurance as a mechanism, and all Virginia local government entities are currently capable of using self insurance as their demonstration mechanism. Consequently, the direct cost of compliance with UST financial responsibility requirements for local partners consists of the staff time to prepare documentation (DEQ forms) required for demonstrating self-insurance. Staff estimate it takes approximately 3 hours to prepare the required documents, which averages \$165 per year.

Indirect Costs: Describe the indirect costs of the proposed change.

Indirect costs could be those associated with noncompliance with financial responsibility requirements resulting in penalties ranging from \$300 to \$1,300.

Direct Benefits: Describe the direct benefits of this proposed change here.

UST financial responsibility requirements ensure that regulated tank owners and operators have the funds to pay their share of the cleanup and/or third-party liability costs resulting from releases of petroleum into the environment. Financially capable tank owners reduce the burden on the Virginia Petroleum Storage Tank Fund, a revolving fund, funded through a gasoline fee and established to contribute financial assistance for petroleum cleanup costs, which means the Fund remains available to assist a wide variety of tank owners in cleaning up petroleum releases.

Indirect Benefits: Describe the indirect benefits of the proposed change.

UST financial responsibility requirements ensure regulated tank owners and operators have the funds to pay their share of the cleanup and/or third-party liability costs resulting from releases of petroleum into the environment, which, in turn, ensures that petroleum releases are cleaned up quickly and environmental and human health impacts are minimized or avoided altogether.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
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	(a) \$165 per year	(b) A more financially viable cleanup fund and reduced impact to human health and the environment from petroleum releases.
(3) Other Costs & Benefits (Non-Monetized)	The UST Financial Responsibility regulation ensures that owners and operators have the financial capability to cover a portion of the cleanup costs associated with a petroleum release. This ensures that petroleum releases are cleaned up expeditiously and risks to human health and the locality's natural resources (and all the industry that flows from those natural resources) are minimized.	
(4) Assistance	DEQ staff are available to assist tank owners and operators in choosing the best financial responsibility for their circumstances.	
(5) Information Sources	Average hourly compensation rates obtained from Bureau of Labor Statistics, U.S. Department of Labor	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>The regulation imposes no direct cost on families.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>A potential indirect cost is higher prices at gasoline convenience stores as UST owners attempt to pass on some of the costs of regulation to customers.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Federal financial responsibility regulations require a tank owner to demonstrate financial responsibility, at a minimum, in the amount of \$1 million. This regulation, which is federally approved, reduces that burden to a minimum of \$20,000 and a maximum of \$200,000, and allows Virginia tank owners to use the Virginia Petroleum Storage Tank Fund as a demonstration mechanism for the difference.</p>
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	<p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p> <p>The UST Financial Responsibility regulation ensures that owners and operators have the financial capability to cover a portion of the cleanup costs associated with a petroleum release, which ensures cleanups generally proceed without delay. Expeditious petroleum cleanups ensure minimal impact on natural resources, such as the surface and groundwater used as drinking water.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Potential costs may be associated with higher prices at gasoline convenience stores, but these costs are unable to be determined.	(b) Protection of critical natural resources such as drinking water.
(3) Other Costs & Benefits (Non-Monetized)	<p>The UST Financial Responsibility regulation ensures that owners and operators have the financial capability to cover a portion of the cleanup costs associated with a petroleum release. This ensures that petroleum releases are cleaned up expeditiously and risks to human health and natural resources (and all the industry that flows from those natural resources) are minimized.</p>	
(4) Information Sources	n/a	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>The direct costs associated with this regulation are the costs expended to demonstrate that an underground storage tank (UST) owner or operator has the financial capability to cover a portion of costs associated with cleaning up a petroleum release from an UST. The regulation offers a variety of options for demonstrating financial responsibility and the costs associated with each are discussed below:</p> <p style="padding-left: 40px;">Self-Insurance: UST owners and operators can demonstrate financial responsibility by documenting they have the tangible net worth to cover the required portion of cleanup costs. Annual</p>
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costs associated with this mechanism can range from \$100 - \$,5000 depending upon whether the company chooses to use audited financial statements or a Dun and Bradstreet rating to document tangible net worth. The low end of the cost range is associated with those tank owners that routinely obtain audited financial statements. In this case, the regulatory cost would be the staff time to prepare the documents required by DEQ to demonstrate. Staff estimate it takes approximately 3 hours to prepare the required documents, which averages \$165 per year.

Letter of Credit: Demonstrating financial responsibility with a letter of credit generally has an annual maintenance cost of approximately 1% to 4% of the face value of the letter of credit. Required demonstration amounts range from as low as \$20,000 to as high as \$200,000. Therefore, the associated costs of this mechanism could range from \$200 to \$8,000. Letters of credit typically necessitate the posting of collateral, in the form of either equity in the grantor's business property or an equivalent amount of cash.

Surety Bond: Average annual maintenance cost ranges from \$200 - \$2,000.

Tank Insurance: Annual premium costs tend to be dependent upon the ages of the tanks insured. For example, at a facility with three newer UST systems, the annual premium may run from \$450-\$1,100. Annual premiums rise gradually as the tanks age and may average about \$3,000 for a 3-tank facility with 25 year old tanks.

Certificate of Deposit (CD): The cost associated with demonstrating financial responsibility with a CD is the initial financial outlay of the entire amount of the CD, which ranges from \$20,000 to \$200,000. There are no annual maintenance costs associated with CDs, and the funds (including interest accrued) are returned to the tank owner or operator when the facility is closed or sold.

Fully Funded Trust Fund: Annual maintenance costs of \$1,500-\$3,000 plus the initial outlay of the demonstration amount which ranges from \$20,000 to \$200,000.

Indirect Costs: Describe the indirect costs of the proposed change.

	<p>Indirect costs could be those associated with noncompliance with financial responsibility requirements resulting in penalties ranging from \$300 to \$1,300.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Federal financial responsibility regulations require a tank owner to demonstrate financial responsibility, at a minimum, in the amount of \$1 million. This regulation, which is federally approved, reduces that burden to a minimum of \$20,000 and a maximum of \$200,000, and allows Virginia tank owners to use the Virginia Petroleum Storage Tank Fund as a demonstration mechanism for the difference.</p> <p>Owners using CDs to demonstrate financial responsibility generate passive income from the accrued interest. Owners demonstrating with an insurance policy may have little to no out-of-pocket costs in the event of a petroleum release.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p> <p>The UST Financial Responsibility regulation ensures that owners and operators have the financial capability to cover a portion of the cleanup costs associated with a petroleum release, which ensures cleanups generally proceed without delay. Expedient petroleum cleanups ensure minimal impact on natural resources, such as the surface and groundwater used as drinking water.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	<p>(a) Self-Insurance: \$100 - \$5,000</p> <p>Letter of Credit: \$50 to \$8,000, with a potential initial outlay of \$20,000 to \$200,000 (the actual amount of the letter of credit)</p> <p>Surety Bond: \$200 - \$2,000.</p>	<p>(b) passive income accumulation for owners demonstrating with CDs; little to no outlay for cleanup for owners demonstrating with insurance policy; Substantial reduction in demonstration amount from federal requirements.</p> <p>Ensuring the financial viability of tank owners contributes to efficient, quick cleanups which, in turn, minimizes the impact on Virginia's natural resources,</p>

	<p>Tank Insurance: \$450-\$1,100 (newer tanks) to \$3,000 for ≥ 25 year old tanks.</p> <p>Certificate of Deposit (CD): Initial outlay of \$20,000 to \$200,000 with no annual maintenance costs.</p> <p>Fully Funded Trust Fund: Annual maintenance costs of \$1,500-\$3,000 plus the initial outlay of the demonstration amount which ranges from \$20,000 to \$200,000.</p>	including Virginia’s drinking water reserves.
(3) Other Costs & Benefits (Non-Monetized)	The UST Financial Responsibility regulation ensures that owners and operators have the financial capability to cover a portion of the cleanup costs associated with a petroleum release. This ensures that petroleum releases are cleaned up expeditiously and risks to human health and natural resources (and all the industry that flows from those natural resources) are minimized.	
(4) Alternatives	Va. Code §62.1-44.34:12 requires the State Water Control Board to promulgate regulations to conform to the federal financial responsibility requirements of 42 U.S.C. §6991B (d) and any regulations adopted thereunder. The regulation under review is the result of this statutory requirement. The UST Financial Responsibility regulation is also required by the federal government for Virginia to receive federal UST grant funds and to authorize Virginia to implement its UST program in lieu of the federal program. There is no viable alternative to having this regulation.	
(5) Information Sources	Conversations between DEQ staff and tank owners/financial providers.	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

Agency Note: This is a periodic review, and the Agency decision is to retain the regulation as written. No changes to the regulation are being proposed at this time.

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Chapter	Authority of Change	Initial Count	Additions	Subtractions	Net Change
9VAC25-590	Statutory:	36	0	0	0
	Discretionary:	0	0	0	0

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
n/a				

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
n/a		

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length
n/a			