



## Final Regulation Agency Background Document

<b>Approving authority name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9 VAC 25-580-10, et seq.
<b>Regulation title</b>	Underground Storage Tanks: Technical Standards and Corrective Action Requirements
<b>Action title</b>	Amendment to the UST Technical Standards and Corrective Action Requirements
<b>Document preparation date</b>	October 28, 2003

This information is required for executive review ([www.townhall.state.va.us/dpbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dpbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dpbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style, and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also alert the reader to changes made to the regulation since publication of the proposed. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation (UST Technical Regulation) contains standards for UST system design, installation, operation, release detection, and closure. The regulation also contains requirements for reporting releases, investigating suspected releases, and taking corrective action following a release.

The Code of Virginia and the Federal UST Regulation have been amended since the subject regulation became effective. The primary goal of amending the subject regulation is to bring this regulation into agreement with the Code of Virginia and the Federal UST Regulation.

The only major amendment not related to changes in Virginia Law and the Federal UST regulation deals with deletion of the requirement for tank owners/operators to obtain a Corrective Action Permit from the Department prior to initiating corrective actions.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On December 4, 2003, the State Water Control Board will promulgate the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation (9 VAC 25-580-10, et seq.) with the amendments proposed during the Public Hearing on September 10, 2003.

### Legal basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

*If the final text differs from the text at the proposed stage, please indicate whether the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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Legal authority for the Underground Storage Technical Standards and Corrective Action Requirements regulation comes from 42 U.S. Code Sections 6912, 6991, 6991(a) - (f), and 6991(h) (<http://www4.law.cornell.edu/uscode/42/ch82.html>) and Sections 62.1-44.34:8 and 9 of the Code of Virginia (<http://legis.state.va.us/Laws/CodeofVa.htm>). Section .62.1-44.34:9 of the Code of Virginia provides the State Water Control Board with the authority to promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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The purposes of the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation (UST Technical Regulation) are to reduce the number of releases from Underground Storage Tanks, increase the ability to quickly detect and minimize contamination resulting from these releases, and ensure adequate cleanup of releases. Persons owning these tanks are required to provide notification to DEQ of the location, contents, and construction of these tanks. The regulation contains standards for UST system design and construction, operating requirements, and release detection. Also, the regulation contains requirements for investigating and cleaning up releases from underground storage tanks and piping.

The two goals of amending the UST Technical Regulation at this time are to: (1) simplify the regulation by having it agree more closely with the Federal UST Regulation; and (2) bring the regulation into agreement with the Code of Virginia that has been amended since the regulation was adopted. The UST Technical Regulation helps to protect the health and safety of the citizens of the Commonwealth by requiring UST owners and operators to monitor their tank systems for releases and take the necessary steps to protect human health and the environment once a release has occurred. The proposed amendments will not alter the effectiveness of the regulation in protecting human health and the environment.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

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The Code of Virginia and the Federal UST Regulation have been amended since the subject regulation became effective. The primary goal of amending the subject regulation is to bring this regulation into agreement with the Code of Virginia and the Federal UST Regulation.

The only major amendment not related to changes in Virginia Law and the Federal UST regulation deals with deletion of the requirement for tank owners/operators to obtain a Corrective Action Permit from the Department prior to initiating corrective actions. Experience gained by the DEQ in the oversight of the UST Technical Regulation indicates that the Department does not need to issue a Corrective Action permit to tank owners/operators in order for those persons to conduct corrective actions. Also, the Federal UST regulation does not require tank owners/operators to obtain a Corrective Action Permit prior to starting corrective actions. Staff, therefore, recommend that the section of the regulation requiring a Corrective Action Permit (Section 290) be deleted.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

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The amendments to the Underground Storage Tanks: Technical Standards and Corrective Action Requirements are expected to benefit both the regulated community and staff at the Department of Environmental Quality. The amendments will bring the regulation into agreement with the Code of Virginia and the Federal UST regulation and this will reduce confusion regarding the actual requirements of the regulation. Removal of the Corrective Action Permit Requirement will streamline cleanups by removing an unnecessary step in the corrective action process.

The amendments to the subject regulation are not expected to provide new problems or disadvantages to the public, tank owners/operators, or staff at the Department of Environmental Quality.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

The text of the regulation has not changed since the amendments were published prior to the public comment period.

**Public comment**

*Please summarize all public comment received during the 60-day period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.*

No comments were received during the public comment period.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		<p><u>Underground Storage Tank</u> or <u>UST</u> means any one...This term does not include any: ...</p> <p>2. Tank used for storing heating oil for consumption on the premises where stored, except for tanks having a capacity of greater than 5,000 gallons and used for storing heating oil.</p>	<p>Change item #2 under the UST definition to read:</p> <p>2. Tank used for storing heating oil for consumption on the premises where stored.</p> <p>This change in the definition brings the definition into agreement with the UST definition found in §62.1-44.34:8 of the Code of Virginia.</p>
10		<p><u>Department of Waste Management</u> means the Virginia Department of Waste Management which has jurisdiction over the proper handling and disposal of solid and hazardous wastes in the Commonwealth of Virginia.</p>	<p>Delete the <u>Department of Waste Management</u> definition.</p> <p>Section 10.1-1183 of the Virginia Code states: "Whenever in this title and in the Code of Virginia reference is made to the Department of Air Pollution Control, the Department of Waste Management or the Council on the Environment, or any division thereof, it shall mean the Department of Environmental Quality."</p>

10		Add a definition for <u>Director</u>	<u>Director</u> means the Director of the Department of Environmental Quality.
10		<u>Owner</u> means: 1. In the case of an UST system in use on November 8, 1984 ...; and 2. In the case of any UST system in use before November 8, 1984, ...	Add the following to the existing definition of <u>Owner</u> : "The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank." This change brings the definition into agreement with the definition in the Virginia Code (§62.1-44.34:8).
50.2		2. Piping. The piping that routinely contains regulated substances (e.g. fill pipes, product lines) and is in contact with the ground must be properly designed, constructed, and protected from corrosion ..."	Delete "(e.g. fill pipes, product lines)" from section 2. These examples are not found in the federal UST regulation and fill pipes do not need to be protected against corrosion. Also, staff members have found that these examples seem to increase confusion amongst the regulated community instead of providing clarification about the requirements of this section of the regulation.
50.3.a.(2)		(2) Overfill prevention equipment that will: (a) Automatically shut off ...; or (b) Alert the transfer operator ...	Add the following, third option for overfill prevention equipment: (c) Restrict the flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling. This third option for overfill prevention equipment was added to the Federal UST regulation in 1990.
130.C		Heating oil USTs installed before 1965 or at an unknown time having a capacity of greater than 5000 gallons must meet the release detection requirements of the regulation by December 22, 1990.	Delete heating oil tanks having a capacity of greater than 5000 gallons from the Schedule for the Phase-in of Release Detection. Section 62.1-44.34:8 of the Code of Virginia was amended in 1996 to exempt all heating oil USTs from the definition of UST and, consequently, the requirements of the UST Technical Regulation.
290		Tank owners/operators are required to obtain a Corrective Action Permit from the board for any corrective action plan required under Section 280	Delete the Corrective Action Permit Requirement. This section is not found in the Federal UST Regulation. Changes in other Virginia Regulations since the UST Technical Regulation was promulgated and the experience gained by program staff since the implementation of the existing regulation indicates that this requirement is unnecessary.
320.3		Department of Waste Management	Change the Department of Water Management in this section to the Department of Environmental Quality. Section 10.1-1183 of the Virginia Code states: "Whenever in this title and in the Code of Virginia reference is made to the Department of Air Pollution Control, the Department of Waste Management or the Council on the Environment, or any division thereof, it shall mean the Department of Environmental Quality."

### Impact on family

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.*

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The proposed amendments to this regulation are expected to have no bearing or effect on the institution of family or on family stability.