



Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25 -580
Regulation title	Underground Storage Tanks: Technical Standards and Corrective Action Requirements
Action title	Amendments Regarding Secondary Containment, Delivery Prohibition, and Operator Training for Owners and Operators
Date this document prepared	February 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Pursuant to the requirements of the federal Energy Policy Act of 2005, the Board is amending the regulation to accomplish the following: (1) require secondary containment of all new and replacement underground storage tanks (USTs) and associated piping within 1000 feet of an existing community water system (this includes the piping distribution system) or other potable drinking water well; (2) develop criteria for determining what tanks are ineligible for petroleum delivery, the methods for marking the tanks, providing notice to owners/operators and delivery companies that the tanks are ineligible and for developing criteria for reclassifying ineligible tanks as eligible; and (3) require training for certain classes of UST operators. The goal of the amendments is to reduce the number and severity of petroleum leaks from UST systems by strengthening pollution prevention requirements and encouraging UST owners and operators to maintain compliant UST systems. To see the full text of this new federal legislation see: http://www.epa.gov/oust/fedlaws/nrg05_01.htm. This proposal consolidates two Notices of Intended Regulatory Action: 2558 / 4469 – Amendment Regarding Operator Training for Owners and Operators published on March 17, 2008 (Volume 24, Issue 14) and 2415 / 4209 - Incorporation of Requirements of Federal Energy Policy Act of 2005 published on August 20, 2007 (Volume 23, Issue 25).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), 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.

The legal basis for the Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9 VAC 25-580) is the State Water Control Law (Chapter 3.1, Article 9 of the Code of Virginia). Specifically, § 62.1-44.34:9:8 authorizes the Board 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. Section § 62.1-44.34:9.5 authorizes the Board to apply for such funds as may become available under federal acts and transmit such funds to appropriate persons.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The amendments are necessary to protect the health, safety or welfare of citizens of the Commonwealth. Secondary containment for new and replaced USTs within 1000 feet of a public water supply or potable well will help prevent future UST leaks and limit the extent and impact of contamination. A delivery prohibition program will provide added incentive for UST owner/operators to maintain compliant tank systems. Compliant tank systems reduce the likelihood and severity of petroleum leaks into the environment. An operator training program will educate UST operators about how to maintain compliant tank systems and how to recognize and respond to problems associated with leaking USTs. Operator familiarity with UST regulatory requirements and with their own UST systems will increase compliance, help prevent future UST releases and limit the extent, impact, and cleanup costs of contamination in the event of a release.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

9VAC25-580-10 (Definitions): The Board is proposing to amend section 9 VAC 25-580-10 to add new definitions that will apply to the new secondary containment, delivery prohibition, and operator training requirements.

9VAC25-580-20 (Applicability): Minor changes to accommodate proper references to the other substantive changes.

9VAC25-580-50 (Performance standards for new UST systems) and 9 VAC 25-580-140 (Requirements for petroleum UST systems): The Board is proposing to amend section 9 VAC 25-580-50 and 9 VAC 25-580-140 to require secondary containment for all new tanks and piping within 1000 feet of existing community water systems or other potable drinking water wells.

9VAC25-580-125 (NEW – Operator Training): The Board is proposing to add section 9VAC25-580-125 to identify specific classes of UST operator and require training for those classes of UST operators.

9 VAC 25-580-370 (NEW- Delivery Prohibition): The Board is proposing to add section 9VAC25-580-370 to prohibit delivery of petroleum products to tanks deemed ineligible by the Board due to noncompliance. This new section of the regulation will contain criteria for determining what tanks are ineligible for petroleum delivery, the process for identifying a tank as ineligible, the methods for marking the tanks and providing notice to owners/operators and delivery companies that the tanks are ineligible and the criteria for reclassifying ineligible tanks as eligible.

The Board followed the US Environmental Protection Agency’s (EPA) grant guidelines for secondary and containment, delivery prohibition, and operator training to develop the amendments.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) The primary advantages to the public are the diminished impacts from leaking USTs to drinking water supplies, wells, and the reduction in the extent of any future releases. The disadvantages are the incremental cost burden to businesses that will be incurred to install and replace USTs with required secondary containment and train their operators and the cost to UST owners who have lost the ability to accept fuel deliveries to a noncompliant UST.

2) The primary advantages to the agency include better deterrence against noncompliant USTs (Delivery Prohibition) and early discovery of leaking USTs in cases where secondarily contained systems exist. The primary agency disadvantage is the cost to implement and oversee the new program activities.

3) Operator training and delivery prohibition efforts have been in existence and worked in other states for years to better limit violations and releases.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

None of the proposed amendments are more restrictive than applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality could be identified that would disproportionately bear the burden of the new requirements.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email or fax to Russell P. Ellison III, VaDEQ, P. O. Box 1105, Richmond, VA 23218, (804) 698-4269, fax (804) 698-4266, rpellison@deq.virginia.gov

Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Implementation and enforcement of proposed regulatory changes can be accomplished with one additional FTE primarily to oversee the operator training program and conduct the delivery prohibition actions. This will cost roughly \$65,000 annually from the Virginia Petroleum Storage Tank Fund. Most program implementation will be handled by existing program staff.</p>
<p>Projected cost of the regulation on localities</p>	<p>Locality costs are projected to be negligible primarily based on the infrequent new/replacement of UST systems now requiring secondary containment at incrementally increased cost. Localities will experience a one time cost for the operator training effort as long as compliance is maintained.</p>

<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>All 4,482 regulated UST owners in VA at the 6,535 commercial gas stations and fueling facilities will be required to implement operator training. Only those choosing to replace or install USTs must install the secondary containment. Only significantly noncompliant facilities will be subject to delivery prohibition actions.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Some 4,482 owner/entities will be affected with some 4,000 considered to be small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>For operator training, the initial <u>one time</u> training costs would average ~\$500/entity. With 4,482 owners the cost would approximate \$2,241,000. <u>Retraining</u> 900 operators per year (triggered from noncompliant inspections) would equal \$450,000 (900 X \$500) annually. Past data indicate there are approximately 200 new UST installs per year plus ~100 UST replacements at \$10,000/tank (incremental secondary containment costs) equals a total additional cost burden of \$3,000,000 annually statewide.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

One alternative is to keep the current regulations as they are; however, the federal Energy Policy Act requires states to incorporate new federal mandates as a condition to receiving federal grant funds. If the Board does not amend the UST regulation to incorporate the new federal requirements, existing levels of federal grant funding (~\$1.7million per year) will be in jeopardy.

The Board also was required to choose between requiring secondary containment of new and replacement USTs and piping or requiring tank manufacturers and installers to maintain evidence of financial responsibility for releases associated with improper installation or manufacture of USTs. Therefore, an alternative was to consider, as part of this regulatory action, requiring tank manufacturers and installers to maintain financial responsibility rather than requiring secondary containment. The Board proposes requiring secondary containment because it is the most environmentally protective alternative and preliminary research indicates that the majority of new tanks and piping installed today are secondarily contained. Further, establishing a program for manufacturer and installer financial responsibility may result in an additional burden on the Virginia Petroleum Storage Tank Fund. The Fund currently acts as a financial responsibility mechanism for tank owners and operators in addition to funding petroleum cleanups. Requiring this additional financial responsibility could mean the Fund will be called

upon to act as an additional financial responsibility mechanism for manufacturers and installers, as well, potentially resulting in less funds available for petroleum cleanups. Finally, all but two states have chosen to require secondary containment rather than installer/manufacturer financial responsibility.

No other alternatives to the intended elements of the amendment were identified during the participatory process. The process involved the use of an advisory committee that included members of the regulated community and the public in an effort to elicit cost effective ideas for developing the necessary provisions.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The federal Energy Policy Act of 2005 and EPA grant guidance establish the minimums required for state program compliance and the proposed amendments comply with those minimal requirements.

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
No comments received.		

Family impact

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.

The only impact on the family or family stability is indirect. Those families living near UST systems-- especially those using private potable water supply wells -- will benefit from the reduced risk of well contamination caused by releases from noncompliant UST systems.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC25-580-10		Definitions	The proposed amendments add definitions to address terms used in the new secondary containment, operator training and delivery prohibition sections of the regulation. Rationale: The new sections are necessary to comply with requirements of the Energy Policy Act of 2005 (see: http://www.epa.gov/swerust1/fedlaws/epact_05.htm)
9VAC25-580-20		Applicability	This section was modified to state that the new delivery prohibition requirements do not apply to deferred tanks but that the new secondary containment provisions do apply to a certain type of deferred tank. Rationale: This change was necessary to comply with the Energy Policy Act of 2005.
9VAC25-580-50	9VAC25-580-50.7	Performance standards for new UST systems	This section was added to impose secondary containment requirements on new or replacement tanks and piping within 1000 feet of a community water source or potable water supply well. This section also imposes under dispenser containment requirements on certain motor fuel dispenser systems. Finally, this section provides procedures for demonstrating that secondary containment is not necessary and lays out conditions under which secondary containment is not required. Rationale: This new section was necessary to comply with the Energy Policy Act of 2005.
9VAC25-580-120.2.e		Reporting and recordkeeping	This new subsection requires operators to maintain records of training certification and operator classification. Rationale: These requirements will ensure that necessary information concerning training and operator classification is available to the Department when needed.
	9VAC25-580-125	NEW	This section establishes operator classes and requires owners and operators to designate and train individuals or entities in each operator class.

			<p>The section imposes requirements on training course content and also provides for Department approval of training courses. This section establishes deadlines for training and circumstances under which operators must retrain and describes the documentation that owners/operators must maintain. This section also provides for reciprocity with other state training programs. <u>Rationale:</u> This section is necessary to comply with the Energy Policy Act of 2005.</p>
9 VAC 25-580-140		Requirements for Petroleum USTs	<p>This section is modified to provide specific requirements to which secondarily contained tanks must conform to accomplish release detection. This amended section also provides release detection requirements for those owners/operators required to have secondary containment under subsection 25-580-50.7. <u>Rationale:</u> This section is necessary to comply with the Energy Policy Act of 2005.</p>
	9VAC25-580-370	NEW	<p>This new section prohibits delivery of a petroleum product into any ineligible tank. This section describes the types of noncompliance that warrant delivery prohibition, the procedure for delivery prohibition and provisions for notifying an owner and operator and product deliverer of delivery prohibition. This section also describes circumstances under which the Department may choose not to prohibit delivery to an ineligible tank. <u>Rationale:</u> This section is necessary to comply with the Energy Policy Act of 2005.</p>