



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Water Control Board
VAC Chapter Number:	9 VAC 25-580-10, et seq.
Regulation Title:	Underground Storage Tanks: Technical Standards and Corrective Action Requirements
Action Title:	Amendment to the UST Technical Standards and Corrective Action Requirements
Date:	February 18, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary*

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing 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. 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.

Basis*

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

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. The proposed changes in the regulation will bring the regulation into agreement with Virginia Laws that have been promulgated or modified since the UST Technical Regulation was adopted. Also, two of the proposed changes bring the regulation into agreement with the requirements in the Federal UST Regulation. The office of the Attorney General has certified that the Board has the authority to adopt the proposed amendments.

Purpose*

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

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. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Amendments needed to the UST Technical Regulation:

Section 10, Definitions

- ▶ "Underground Storage Tank" or "UST" means any one...This term does not include any: ...
- 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.

Change item #2 under the UST definition to read:

- 2. Tank used for storing heating oil for consumption on the premises where stored.

This matches the definition of UST found in the Law (§62.1-44.34:8)

- ▶ "Department of Waste Management"

Delete this definition. 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."

- ▶ Add Definition for "Director"

Director means the director of the Department of Environmental Quality

- ▶ Add the following paragraph to the definition of "owner" to bring the definition in the regulation into agreement with the definition in the law (§62.1-44.34:8).

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.

▶ Section 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.

▶ Section 50.3.a.(2)

In 1990, an amendment was made to the Federal UST Regulation requiring overfill prevention equipment to restrict flow, alert the operator, or shut off flow into the tank to prevent overfilling. To bring this section of the regulation into agreement with the Federal UST Regulation, the following subsection should be added to the regulation.

(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.

▶ Section 130.C

Remove * from table and remove the accompanying explanation. Virginia Water Control Law was changed in 1996 to exempt heating oil tanks greater than 5,000 gallons from the requirements of the UST Technical Regulation.

▶ Section 290

This section is not found in the Federal UST Regulation. Changes in other Virginia Regulations since the UST Technical Regulation was promulgated and twelve years experience of managing UST cases indicates that this section is not needed. The DEQ recommends deleting Section 290 of the regulation.

▶ Section 320.3

Change "Department of Waste Management" to "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."

Issues*

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

The proposed changes related to making the regulation consistent with Virginia Law are expected to help the regulated community to better understand the regulations. These changes also are expected to benefit

DEQ staff by reducing the time that staff must spend explaining the differences between the law and regulation to tank owners/operators.

The recommendation to remove the requirement for a corrective action permit is expected to benefit both the regulated community and DEQ in that it will remove an unnecessary step and streamline the process by which corrective actions may begin.

The proposed regulatory changes are not expected to place any individual or group within the Commonwealth at a disadvantage nor are these proposed changes expected to increase burdens on any individual or entity.

Locality 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.

This regulation is statewide in scope and is not expected disproportionately affect certain localities or regions of the Commonwealth.

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 Board is seeking comments on the proposed regulatory action the costs and benefits of the alternatives stated in this notice or other alternatives, and the impacts of the proposal on farm and forest land preservation.

A public hearing will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations.

Anyone wishing to submit written comments for the public comment file may do at the public hearing or by mail. Written comments should be signed by the commenter and include the name and address of the commenter. In order to be considered the comments must be received by the close of the comment period and should be sent to the DEQ staff member at the address listed below. Oral comments may be presented at the public hearing.

James Barnett
Virginia Department of Environmental Quality
P.O. Box 1009
Richmond, VA. 23240

804-698-4289 (phone)
804-698-4266 (fax)
jsbarnett@deq.state.va.us

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; (e) the projected cost of the regulation for affected individuals, businesses, or other entities; and (f) an estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

The UST Technical Regulation has been implemented by the Commonwealth for over 12 years. At the present time, personnel costs for the regulated UST program total approximately 3.8 million dollars per year. Funding for personnel costs to administer the UST Technical Regulation comes from the Virginia Petroleum Storage Tank Fund (VPSTF) and a Federal UST/LUST grant.

The federal grant that DEQ receives for administering the UST program currently pays for approximately 975,000 dollars per year in personnel costs. The remaining 2.8 million dollars in personnel-related costs is paid by the VPSTF.

The VPSTF is a non-lapsing, revolving fund that is administered by DEQ. VPSTF provides funding to the DEQ for administering state regulatory programs authorized by Articles 9, 10, and 11 of Virginia Water Control Law (Sections 62.1-44.34:8 through 23 of the Code of Virginia). The VPSTF also is used to provide reimbursement for cleanup of oil discharged from tanks within the Commonwealth. Monies reimbursed for cleanup of these releases is presently running around 16 million dollars per year.

The primary revenue source for VPSTF is a state fee on certain petroleum products including gasoline, aviation motor fuel, diesel fuel, dyed diesel fuel, kerosene, and heating oil sold in Virginia. At the present time, the fee on these fuels is 6/10 of a cent per gallon. The fee is collected by the Department of Motor Vehicles

Owners and operators of USTs are the entities responsible for ensuring that USTs meet the requirements of the regulation and are the entities most affected by the regulation. The amendments to the regulation will have minimal impact or affect on tank owners and operators. At the present time, there are approximately 30,000 regulated USTs that are being used within the Commonwealth. A little over 6,000 different entities own these active, regulated USTs.

There are expected to be no additional costs to businesses, localities, the public or the Commonwealth to implement the amended regulation. The proposed changes in the regulation are related mostly to clarification and do not place additional requirements on tank owners or operators. Implementation of the amended regulation is not expected to increase staffing needs or staff training.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Amendments needed to the UST Technical Regulation:

Section 10, Definitions

- ▶ "Underground Storage Tank" or "UST" means any one...This term does not include any: ...
- 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.

Change item #2 under the UST definition to read:

- 2. Tank used for storing heating oil for consumption on the premises where stored.

This matches the definition of UST found in the Law (§62.1-44.34:8)

▶ "Department of Waste Management"

Delete this definition. 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."

▶ Add Definition for "Director"

Director means the director of the Department of Environmental Quality

- ▶ Add the following paragraph to the definition of "owner" to bring the definition in the regulation into agreement with the definition in the law (§62.1-44.34:8).

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.

▶ Section 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.

▶ Section 50.3.a.(2)

In 1990, an amendment was made to the Federal UST Regulation requiring overflow prevention equipment to restrict flow, alert the operator, or shut off flow into the tank to prevent overflowing. To bring this section of the regulation into agreement with the Federal UST Regulation, the following subsection should be added to the regulation.

(c) Restrict the flow 30 minutes prior to overflowing, alert the operator with a high level alarm one minute before overflowing, 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 overflowing.

▶ Section 130.C

Remove * from table and remove the accompanying explanation. Virginia Water Control Law was amended in 1996 to exempt heating oil tanks greater than 5,000 gallons from the requirements of the UST Technical Regulation.

▶ Section 290

This section is not found in the Federal UST Regulation. Changes in other Virginia Regulations since the UST Technical Regulation was promulgated and twelve years experience of managing UST cases indicates that this section is not needed. The DEQ recommends deleting Section 290 of the regulation.

▶ Section 320.3

Change "Department of Waste Management" to "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."

Alternatives

Please describe the specific 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.

Underground Storage Tank Regulations exist at the Federal Level as well as within the Commonwealth. One alternative that Virginia has is to repeal its UST Technical Regulation and rely on the Federal UST regulation. This alternative is not recommended. Returning the program and regulation to the Federal level will result in delays for tank owners and persons wishing to clean up releases. These delays will likely result in increased costs to the regulated community and increased damages to Virginia's environment.

A second alternative is to leave the UST Technical Regulation as it presently exists. This option is not recommended. Several Virginia laws have been modified since the UST Technical Regulation was promulgated. Conflicts between the regulation and current laws create confusion, increase staff time explaining the discrepancies to the regulated community, and may hinder enforcement actions.

A third alternative is to amend the UST Technical Regulation to incorporate statutory changes that have been made since the regulation was promulgated. This alternative is recommended as the least burdensome to the citizens of the Commonwealth. Virginia's UST Program and regulation are intended to meet the needs of the citizens of the Commonwealth of Virginia. Amending the regulation will reduce

confusion caused by discrepancies between the regulation and current Virginia Laws. Amending the regulation also will allow DEQ to more effectively enforce the regulation, thereby, reducing risks to human health and the environment posed by leaking underground storage tanks.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

Comment: I understand the DEQ's holding the owner of USTs accountable for compliance. However, I have serious concerns about how the DEQ will react to the failure of an operator of USTs, not the owner, who has not complied with all of the regulatory requirements. I feel that specific wording should be included in the regulation which, clearly, holds the operator to the same or greater degree of responsibility as the owner.

Agency Response: The requirements of the UST Technical regulation apply to all owners and operators of UST systems as that term is defined in the regulation (see 9 VAC 25-580-20.A). In other words, both the tank owner and the tank operator are responsible for compliance with the regulation.

Comment: Mandating hand written reports from personnel assigned fuel delivery monitoring duties overlooks the fact that many sites belonging to both the State Government and the general public are equipped with automated systems that are more accurate than either stick readings or delivery truck records. The automated systems adopted by AMD, VDOT to monitor their fuel inventories, deliveries and fuel that is dispensed daily are encouraged and promoted by the EPA. As such, the records kept by these systems should be preferentially acceptable to manual delivery and inventory reports.

The UST Technical Regulation does not mandate hand-written inventory reports or the manual keeping of inventory records. Tank owners and operators using automatic tank gauging systems may use a test of equivalent performance to meet the inventory control requirement for automatic tank gauging systems. Section 160.8 of the regulation allows other methods of release detection to be used if the method can detect a .2 gallon per hour leak rate. Building and/or fire codes may specify inventory control requirements for tanks containing flammable liquids above and beyond what is required by the UST Technical regulation.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The subject regulation has been administered by DEQ for over 12 years. DEQ staff experience suggests that the majority of tank owners/operators understand the major components and key elements of the regulation. Most of the regulatory changes suggested are intended to further clarify the regulation.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The subject regulation will be reviewed four years after the effective date of the amended regulation. The review process will involve the comparison of the regulation with Virginia's laws and regulations and the Federal UST regulation. The purpose of the review will be to determine if the regulation should be amended to conform with legislative changes.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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 proposed amendments to this regulation are expected to have no bearing or effect on the institution of family or on family stability.