



Virginia  
Regulatory  
Town Hall

## Periodic Review and Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	State Water Control Board
<b>VAC Chapter Number:</b>	9 VAC 25-640
<b>Regulation Title:</b>	Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements
<b>Action Title:</b>	Amendment to the AST and Pipeline Facility Financial Responsibility Requirements
<b>Date:</b>	March 1, 2006

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

The regulation requires owners/operators of regulated petroleum aboveground storage tanks (ASTs) and pipeline facilities to demonstrate they have the financial resources available to pay for the costs of containment and cleanup in the event of a release from their tanks.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

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The legal basis for the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation, 9 VAC 25-640., is the State Water Control Law (Chapter 3.1, Title 62.1, Section 44.34, Articles 9 and 10 of the Code of Virginia). Specifically, § 62.1-44.34:16D authorizes the State Water Control Board to promulgate regulations requiring operators of facilities to demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.*

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The Virginia of Environmental Quality (Department) did not receive any comments in response to the January 23, 2006, publication of periodic review in the Virginia Register (public comment period closed February 22, 2006). As a result, no critical issues or particular areas of concern were identified in the regulation. The Department did not establish an informal advisory group to assist in the periodic review. The Department is seeking public input during the Notice of Intent comment period on establishing an advisory group to assist in the development of proposed changes to the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The specific and measurable goals of the financial responsibility regulation are to protect public health and/or welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth and to establish procedures and requirements for owners/operators to demonstrate financial responsibility for containment and cleanup necessitated by accidental releases arising from the operation of petroleum ASTs and pipeline facilities.

The Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation is written clearly and is understandable by the individuals and affected entities. The

Department anticipates that proposed changes to the regulation will only increase its effectiveness in communicating the regulatory requirements to affected entities.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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The Department is examining alternatives that will provide owner/operators with more affordable ways to demonstrate AST financial responsibility while continuing to support the goals of the regulation. The goals of the financial responsibility regulation are to protect public health and/or welfare with the least possible cost and disruption to the citizens and businesses of the Commonwealth and to establish procedures and requirements for owners/operators to demonstrate financial responsibility for containment and cleanup necessitated by accidental releases arising from the operation of petroleum ASTs and pipeline facilities. One of the alternatives the Department has considered is to keep the current regulations as they are, however the current regulations require mechanisms that have become less feasible given the rising costs associated with establishing the mechanisms.

The Department will explore other alternatives that may provide more cost-effective approaches for compliance than existing mechanisms. The Department will also solicit public input during the review and consider alternatives presented by the regulated community which also meet the goals of the regulation.

## Recommendation

*Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.*

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The Department is recommending the AST financial responsibility regulations be amended to provide owners/operators a more affordable way to demonstrate AST financial responsibility. The recommendation is being made in order to further pursue the goals of the regulation (see above) while continuing to comply with existing statutory direction.

## Substance

*Please detail any changes that would be implemented.*

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The Department is exploring alternative methods for achieving compliance with the AST financial responsibility regulations while continuing to meet the goals of the financial responsibility regulation. Specifically, the Department is investigating ways to reduce the cost of

compliance with the regulation by proposing modified compliance requirements. The Department will also propose administrative changes to the regulation that do not affect the regulatory requirements. Finally, the Department will propose language to clarify how the Virginia Petroleum Storage Tank Fund (VPSTF) is used to reimburse tank operators for the cost of containment and cleanup of a petroleum release from an AST. In addition to the proposed changes, the Department will also solicit public input during the review and consider alternatives presented by the regulated community which also meet the goals of the regulation.

### Family Impact Statement

*Please provide a preliminary 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 Department does not anticipate that the proposed changes to the AST financial responsibility regulations will erode the authority and rights of parents in the education, nurturing and supervision of their children; 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; strengthen or erode the marital commitment; or increase/decrease disposable family income.

### Purpose\*

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

According to the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation (9 VAC 25-640), owners/operators of regulated petroleum ASTs and pipeline facilities must demonstrate they have the financial resources available to pay for the costs of containment and cleanup necessitated by accidental releases arising from the operation of petroleum ASTs and pipeline facilities. As part of the proposed regulatory action, the Department is exploring alternative methods for achieving compliance with the AST financial responsibility requirements while continuing to meet the goals of the financial responsibility regulations. Specifically, the Department is investigating ways to reduce the cost of compliance with the regulation by proposing modified compliance requirements that are no less stringent than the existing requirements, but may be more cost effective to secure. The Department will also propose administrative changes to the regulation that do not affect the regulatory requirements. Article 10 of State Water Control Law allows for reimbursement of reasonable and necessary containment and cleanup costs for petroleum releases from ASTs. The Department will propose language to clarify how VPSTF is used to reimburse tank operators for the cost of containment and cleanup of a petroleum release from an AST. In addition to the

changes proposed by the Department of Environmental Quality, the Department will also solicit public input during the review and consider alternatives presented by the regulated community which also meet the goals of the regulation.

### Need\*

*Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied*

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The main purpose of pursuing a regulatory amendment to the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements is to identify less burdensome and less intrusive alternatives for achieving compliance with the regulation. Some of the compliance mechanisms available to owners/operators have become less feasible given the rising costs associated with establishing the mechanisms.

The Department is exploring other ways to comply with the regulatory requirements while continuing to meet the goals of the regulation and protect the health, safety or welfare of citizens. The proposed regulatory action will be an amendment to the existing AST financial responsibility regulations. The specific and measurable goals of the regulation are to protect public health and/or welfare with the least possible cost and disruption to the citizens and businesses of the Commonwealth and to establish procedures and requirements for owners/operators to demonstrate financial responsibility for containment and cleanup necessitated by accidental releases arising from the operation of petroleum ASTs and pipeline facilities. Through the regulatory development process, the Department will explore alternative methods for achieving compliance with the AST financial responsibility regulations while continuing to meet the goals of the financial responsibility regulation. Specifically, the Department is investigating ways to reduce the cost of compliance with the regulation by proposing modified compliance requirements in an effort to reduce the costs associated with securing some of the allowable mechanisms. The Department will propose language to clarify how VPSTF is used to reimburse tank operators for the cost of containment and cleanup of a petroleum release from an AST. The Department will also propose administrative changes to the regulation that do not affect the regulatory requirements, and will solicit public input during the review and consider alternatives presented by the regulated community which also meet the goals of the regulation.

### Substance\*

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.*

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The Department is exploring alternative methods for achieving compliance with the AST financial responsibility requirements while continuing to meet the goals of the financial

responsibility regulations. Specifically, the Department is investigating ways to reduce the cost of compliance with the regulation by proposing modified compliance requirements. This will, in effect, reduce the costs associated with achieving and maintaining compliance with the regulation. The Department will propose language to clarify how VPSTF is used to reimburse tank operators for the cost of containment and cleanup of a petroleum release from an AST. The Department will also propose administrative changes to the regulation that will clarify existing requirements within the regulation. In addition to the proposed changes, the Department will also solicit public input during the review and consider alternatives presented by the regulated community which also meet the goals of the regulation.

### Alternatives\*

*Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action, and the reasoning by which the agency has rejected any of the alternatives considered.*

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The Department will research current industry practices to identify alternative methods for achieving compliance with the AST financial responsibility requirements. The Department will also solicit public input during the review process and consider alternatives presented by the regulated community which also meet the goals of the regulation. To date, the only alternative the Department has considered fully has been to keep the current regulations as they are. The Department has determined, however the current regulations require mechanisms that have become less feasible given the rising costs associated with establishing the mechanisms. There may be more cost effective approaches for compliance than existing regulations allow. The Department will also solicit public input during the review and consider alternatives presented by the regulated community which also meet the goals of the regulation.

### Public Participation\*

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.*

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The Board is seeking comments on the intended regulatory action, including ideas to assist in the development of a proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Anyone wishing to submit written comments for the public comment file may do so at the public meeting 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 comments must be received by the close of the comment period. Comments should be sent to Leslie D.

Beckwith, Post Office Box 10009, Richmond, Virginia 23240-0009 (deliveries can be made to 629 East Main Street, Richmond, Virginia), 804.698.4123, fax 804.698.4237, [ldbeckwith@deq.virginia.gov](mailto:ldbeckwith@deq.virginia.gov). **Note: Please include your full name and mailing address when providing public comment.** A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Oral comments may be submitted at that time.

### Participatory Approach\*

*Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

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The Board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal.