



Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-640
Regulation title	Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements
Action title	Proposed Regulatory Amendment
Date this document prepared	March 3, 2008

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation requires 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. Proposed amendments to the existing regulation include: 1) elimination of the standby trust requirement for third party mechanisms such as letters of credit and surety bonds 2); expansion of the section related to fund access for AST operators, and 3); grammatical changes.

Minor changes have been made since the proposed regulation.

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.

The State Water Control Board adopted the final amendments of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulations at the April 10, 2008, meeting.

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 numbers, if applicable, and (2) promulgating entity, i.e., agency, Board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The mandatory legal authority 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 10 and 11 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 and operators of pipelines to demonstrate financial responsibility for any pipelines operated within the Commonwealth.

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.

The amended regulation is intended to reduce the cost of compliance for the regulated community, address clarification issues pertaining to access to the Virginia Petroleum Storage Tank Fund, and to clarify administrative issues that have arisen since the regulation was last modified. Specifically the Department is proposing to reduce the cost of compliance by eliminating the standby trust for certain third party mechanisms. Further, this amendment will clarify the circumstances for fund access to facility owners. And finally, it will provide grammatical changes for purposes of clarification of meaning and intent.

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.

The one substantive change to the regulation is the elimination of the requirement for a standby trust fund to accompany certain financial assurance mechanisms such as letters of credit, surety bonds, and corporate guarantees. This provision will result in a significant cost savings for operators who use one of the affected mechanisms.

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.

The primary advantage to the public is an increased level of protection associated with third party financial mechanisms. By eliminating the standby trust fund requirement for letters of credit, surety bonds, and corporate guarantees, the cost of obtaining these mechanisms is reduced and encourages operators to demonstrate using these mechanisms rather than self-insurance. The primary advantage to the agency and the Commonwealth is that financial mechanisms backed by a third party such as a bank or surety company are more likely to ensure that the money will be available for clean up or compensating third parties than relying on the operator's net worth. There are no potential disadvantages to the public or the Commonwealth from adopting the proposed amendments.

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.

Section number	Requirement at proposed stage	What has changed	Rationale for change
10	"Group self-insurance pool" or "pool" means a pool organized by two or more operators of aboveground storage tanks, including pipelines, for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by §62.1-44.34:16 of the Code of Virginia.	"Group self-insurance pool" or "pool" means a pool organized by two or more operators of [aboveground storage tanks, including pipelines, facilities] for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by §62.1-44.34:16 of the Code of Virginia.	Deleted words "aboveground storage tanks, including pipelines". Revision made pursuant to comment from AG's office that the statutory term "facility" includes the aboveground storage tanks and pipelines.
10	"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.	"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel. [For purposes of this chapter, the definition of operator is restricted to operators of facilities.]	Added "[For purposes of this chapter, the definition of operator is restricted to operators of facilities.]" Revision made pursuant to comment from AG's office to clarify that the definition of "operator" means only operators

			of facilities and pipelines.
10	"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280. <u>For purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support.</u>	"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280. <u>For purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. [This term does not include flow-through process tanks as defined in 40 CFR Part 280.]</u>	Added " <u>This term does not include flow-through process tanks as defined in 40 CFR Part 280.</u> " Revision made pursuant to comment from AG's office to clarify that definition of "tank" does not include flow-through process tanks.
20.F	<u>F. The provisions in 9VAC25-640-220 apply to operators of all aboveground storage tank facilities, regardless of storage capacity, unless otherwise exempted or excluded in 9VAC25-640-30.</u>	<u>F. The provisions in 9VAC25-640-220 apply to [all] operators of [all] aboveground storage tank facilities, regardless of storage capacity, unless otherwise exempted or excluded in 9VAC25-640-30.</u>	Deleted the word <u>all</u> . Grammar revision made pursuant to comment from AG's office.
30.3, 7, 15, 20, and 24	Each section contains the following excerpt: " <u>except for the requirements of 9VAC25-640-220;</u> "	<u>"except [for with regard to purposes of] the requirements of 9VAC25-640-220;"</u>	Deleted the word <u>for</u> . Grammar revision made pursuant to comment from AG's office.
50	Section does not specify that the financial responsibility demonstration amounts for ASTs should also include any applicable amounts that the operator may have to demonstrate under 9VAC25-590-40.	<u>[F. For purposes of the financial test of self-insurance, an operator and/or guarantor shall have a tangible net worth at least equal to the applicable amount required by subsection A of this section plus any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility.]</u>	Revision made pursuant to comment from AG's office to require operators who use self insurance to demonstrate financial responsibility to also show the amount demonstrated for underground storage tanks.
70.B.1	B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial	B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial	Deleted text that is redundant with text in 50.F. Revision made pursuant to comment from AG's office.

	responsibility <u>and any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility.</u>	responsibility [and any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility] .	
80.B	B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 9VAC25-640-70 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and shall deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the operator. If the Board notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-640-70 B or C and D, the guarantor shall notify the operator within 10 days of receiving such notification from the Board. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator shall obtain alternate coverage as specified in 9VAC25-640-200.	B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 9VAC25-640-70 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and shall deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the operator [<u>and the Board</u>]. If the Board notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-640-70 B or C and D, the guarantor shall notify the operator within 10 days of receiving such notification from the Board. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator shall obtain alternate coverage as specified in 9VAC25-640-200.	Added " <u>and the Board</u> " to clarify that the <u>Board</u> should always be notified in the event of the failure or imminent failure of a financial responsibility mechanism. Revision made pursuant to comment from AG's office.
80.D	D. An operator who uses a guarantee to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with	[D.] An operator who uses a guarantee to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with	Deleted all of 80 D because this is redundant with 180.B. Revision made pursuant to comment from AG's office.

	instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130. <u>Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be paid directly to the Board in accordance with instructions from the Board under 9VAC25-640-180.</u>	instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130. [<u>Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be paid directly to the Board in accordance with instructions from the Board under 9VAC25-640-180.</u>]	
100.D	D. The operator who uses a surety bond to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Board under <u>paid directly to the Board in accordance with instructions from the Board under 9VAC25-640-180.</u> This standby trust fund shall meet the requirements specified in 9VAC25-640-130.	[D.] The operator who uses a surety bond to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the surety bond is acquired. [Under the terms of the bond, all amounts paid by the surety under the bond will be] deposited directly into the standby trust fund in accordance with instructions from the Board under [<u>paid directly to the Board in accordance with instructions from the Board under 9VAC25-640-180.</u>] This standby trust fund shall meet the requirements specified in 9VAC25-640-130.	Deleted all of 100 D because this is redundant with 180.B. Revision made pursuant to comment from AG's office.
110.C	C. An operator who uses a letter of credit to satisfy the requirements of 9VAC25-640-50 also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Board will be deposited by the issuing institution directly into the standby trust fund <u>paid by the issuing institution directly to the Board</u> in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130.	[C.] An operator who uses a letter of credit to satisfy the requirements of 9VAC25-640-50 also shall establish a standby trust fund when the letter of credit is acquired. [Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Board will be] deposited by the issuing institution directly into the standby trust fund [<u>paid by the issuing institution directly to the Board</u> in accordance with instructions from the Board under 9VAC25-640-180.] This standby trust fund shall meet the requirements specified in 9VAC25-640-130.	Deleted all of 110 C because this is redundant with 180.B. Revision made pursuant to comment from AG's office.
160.A	A. Except as specified in 9VAC25-640-170 B 7, an operator of a facility existing as of March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001. <u>An operator shall submit the</u>	A. Except as specified in 9VAC25-640-170 B 7, an operator of a facility existing as of March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001. <u>An operator shall submit the</u>	Public commenter noted that 9VAC25-90-210 has been repealed and replaced with 9VAC25-91. Revision made as suggested.

	<p><u>appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility to the Board within 30 days after the operator identifies or confirms a discharge from an aboveground storage tank or pipeline required to be reported under 9VAC25-90-210. For all subsequent discharges within the same period of time for which the documents submitted according to this subsection are still effective, the operator shall submit a letter that identifies the operator's name and address and the aboveground storage tank's or pipeline's location by site name, street address, Board incident designation number and a statement that the financial responsibility documentation previously provided to the Board is currently in force.</u></p>	<p><u>appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility to the Board within 30 days after the operator identifies or confirms a discharge from an aboveground storage tank or pipeline required to be reported under 9VAC25-[90 91-210] . For all subsequent discharges within the same period of time for which the documents submitted according to this subsection are still effective, the operator shall submit a letter that identifies the operator's name and address and the aboveground storage tank's or pipeline's location by site name, street address, Board incident designation number and a statement that the financial responsibility documentation previously provided to the Board is currently in force.</u></p>	
<p>170.B.5</p>	<p>7. 5. For subsequent annual updates <u>submissions</u> required under 9VAC25-640-160:</p>	<p>7. 5. For [subsequent annual] updates <u>submissions</u> required under 9VAC25-640-160:</p>	<p>Section 160 does not mention annual submissions of financial responsibility documents. In order to be clear, section 170, which in this excerpt refers back to 160, should simply refer generally to submissions, not specifically to annual submissions. Revision made pursuant to comment from AG's.</p>
<p>170.B.5. a, b, c, d, and e</p>	<p>a. The operator may maintain an endorsement, a rider or a notice of extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit or insurance policy, provided the form of the endorsement, rider or notice of extension is approved by the Board;</p> <p>b. The operator need not obtain a new original guarantee or trust fund, provided the same</p>	<p>a. The operator [may maintain <u>must provide</u>] an [<u>insurance</u>] endorsement [; or certificate, a rider] or a notice of extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit [or insurance policy] , provided the form of the [<u>insurance</u>] endorsement [; or certificate, rider] or notice of extension is approved by the Board;</p>	<p>Revision made pursuant to staff suggestion to clarify that operators "must provide" not just maintain or obtain, original documents under certain circumstances. Further revisions of this section, also pursuant to staff suggestion, clarify what forms of documentation must</p>

	<p>mechanism is to continue to act as the operator's demonstration mechanism for the subsequent year or years;</p> <p>c. The operator need not obtain a new standby trust agreement, provided the financial assurance mechanism remains the same;</p> <p>d. c. The operator must maintain a new original mechanism as specified in subdivision 2 of this subsection;</p> <p>e. d. The operator need not obtain a new original certification of acknowledgment, provided the associated trust agreement has not changed;</p> <p>f. e. The operator must maintain a new original certification of financial responsibility.</p>	<p>b. The operator need not [obtain provide] a new original guarantee or trust fund, provided the same mechanism is to continue to act as the operator's demonstration mechanism for the subsequent year or years;</p> <p>c. The operator need not obtain a new standby trust agreement, provided the financial assurance mechanism remains the same;</p> <p>d. c. The operator must [maintain provide] a new original mechanism as specified in subdivision 2 of this subsection;</p> <p>e. d. The operator need not [obtain provide] a new original certification of acknowledgment, provided the associated trust agreement has not changed;</p> <p>f. e. The operator must [maintain provide] a new original certification of financial responsibility.</p>	<p>be provided as evidence of proper tank insurance coverage.</p>
<p>200.B</p>	<p>B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the operator by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-640-80.</p>	<p>B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the operator [<u>and the Board</u>] by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-640-80.</p>	<p>Added "<u>and the Board</u>" to clarify that the State Water Control Board should always be notified in the event of the bankruptcy or imminent failure of a guarantor of a financial responsibility mechanism.</p> <p>Revision made pursuant to comment from AG's office.</p>

Public comment

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

Commenter	Comment	Agency response
Sonia Schmitt, Allied Terminals, Inc., Regulatory Affairs Manager	Commenter pointed out that 9VAC25-90, which is referenced in §160.A of the previously proposed version of the regulation, has been repealed and replaced with 9VAC25-91.	The regulatory citation has been corrected in the current proposed version of the regulation.

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		Owner	Deleted reference to AST owner throughout document. AST or pipeline operators are required to demonstrate financial responsibility.
10, 70, Appendix 1		Rural Electrification Administration	Replaced Rural Electrification Administration with Rural Utilities Office throughout document; replaced due to agency name change.
10		None	<u>"Group self-insurance pool" or "pool" means a pool organized by two or more operators of aboveground storage tanks, including pipelines, for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by §62.1-44.34:16 of the Code of Virginia.</u> Added to define the group self-insurance pool mechanism.
10		None	<u>Group self-insurance pool" or "pool" means a pool organized by two or more operators of [aboveground storage tanks, including pipelines, facilities] for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility</u>

			<p>as required by §62.1-44.34:16 of the Code of Virginia.</p> <p>Text has been revised for purposes of clarification and accuracy.</p> <p>Revision made pursuant to comment from AG's office and has been made subsequent to the initial addition of this language during the proposal stage of the amendment process.</p>
10		None	<p><u>"Member" means an operator of an aboveground storage tank or pipeline who has entered into a member agreement and thereby becomes a member of a group self-insurance pool.</u></p> <p>Added to define the term "member."</p>
10		None	<p><u>"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.</u></p> <p>Added to define the term "member agreement."</p>
10		Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.	<p>"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel. <u>[For purposes of this chapter, the definition of operator is restricted to operators of facilities.]</u></p> <p>Text has been revised to clarify definition of operator.</p> <p>Revision made pursuant to comment from AG's office.</p>
10		None	<p><u>"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.</u></p>

			Added to define the term "pool plan."
10		None	<u>"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into groundwater, surface water, or upon lands, subsurface soils or storm drain systems.</u> Added to define the term "release."
10, 30,50,180, 190, and Appendices I through IX		et seq.	Deleted et seq." from regulatory citations throughout document due to style change.
10		"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.	"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280. <u>For purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support.</u> Clarified for purposes of 9 VAC 25-640-220.
10		"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280. <u>For purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural</u>	"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. [This term does not include flow-through process tanks as defined in 40 CFR Part 280.] <u>For purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural</u>

		support.	<p>support. [This term does not include flow-through process tanks as defined in 40 CFR Part 280.]</p> <p>Moved the following excerpt: “<u>This term does not include flow-through process tanks as defined in 40 CFR Part 280.</u>” to the end of the definition of “tank.”</p> <p>Revision made pursuant to comment from AG’s office to clarify that definition of “tank” also does not include flow-through process tanks for the purposes of 9VAC25-640-220. This revision affects text initially revised (see panel directly above) during the proposed stage of the amendment process.</p>
10		None	<p><u>Group self-insurance pool" or "pool" means a pool organized by two or more operators of [aboveground storage tanks, including pipelines, facilities] for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by §62.1-44.34:16 of the Code of Virginia.</u></p> <p>Deleted words “aboveground storage tanks, including pipelines”.</p> <p>Revision made pursuant to comment from AG’s office that the statutory term “facility” includes the aboveground storage tanks and pipelines.</p>
20	20.F	None	<p><u>F. The provisions in 9VAC25-640-220 apply to operators of all aboveground storage tank facilities, regardless of storage capacity, unless otherwise exempted or excluded in 9VAC25-640-30.</u></p> <p>Section added to clarify applicability of provisions added to 220.</p> <p>Revision made pursuant to comment from AG’s office.</p>
20		None	<p><u>F. The provisions in 9VAC25-640-220 apply to [all] operators of [all] aboveground storage tank</u></p>

			<p><u>facilities, regardless of storage capacity, unless otherwise exempted or excluded in 9VAC25-640-30.</u></p> <p>Revision made pursuant to comment from AG's office. This revision changes language added (see panel directly above) during the proposed stage of the amendment process.</p>
30.3, 7, 15, 20, and 24		None	<p><u>except for the requirements of 9VAC25-640-220</u></p> <p>Text has been revised in order to clarify which exclusions do not obtain under the requirements of 220.</p>
30.3, 7, 15, 20, and 24		None	<p><u>"except [for with regard to purposes of] the requirements of 9VAC25-640-220;"</u></p> <p>Revision made pursuant to comment from AG's office. This revision, which has been made during the current (final) stage of the amendment process, changes language added (see panel directly above) during the proposed stage of the amendment process</p>
50	50.F	None	<p><u>[F. For purposes of the financial test of self-insurance, an operator and/or guarantor shall have a tangible net worth at least equal to the applicable amount required by subsection A of this section plus any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility.]</u></p> <p>Revision made pursuant to comment from AG's office to clarify the requirement that operators who use self insurance to demonstrate financial responsibility must also include the amount demonstrated for underground storage tanks.</p>
70		B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to	B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to

		demonstrate financial responsibility.	demonstrate financial responsibility <u>and any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility.</u> Revision made to clarify the requirement that operators who use self insurance to demonstrate financial responsibility must also include the amount demonstrated for underground storage tanks.
70		B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial responsibility.	B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial responsibility [and any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility] . Text added during the proposed stage of the amendment process has been deleted pursuant to comment from AG's office
80.B		B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 9VAC25-640-70 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and shall deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the operator. If the Board	B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 9VAC25-640-70 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and shall deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the operator [<u>and the</u>

		<p>notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-640-70 B or C and D, the guarantor shall notify the operator within 10 days of receiving such notification from the Board. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator shall obtain alternate coverage as specified in 9VAC25-640-200.</p>	<p><u>Board</u>]. If the Board notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-640-70 B or C and D, the guarantor shall notify the operator within 10 days of receiving such notification from the Board. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator shall obtain alternate coverage as specified in 9VAC25-640-200.</p> <p>Revision made pursuant to comment from AG's office. The Board should always be notified in the event of the failure or imminent failure of a financial responsibility mechanism.</p>
80.D		<p>D. An operator who uses a guarantee to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130.</p>	<p>D. An operator who uses a guarantee to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be paid directly to the Board in accordance with instructions from the Board under 9VAC25-640-180.</p> <p>Standby trust requirement eliminated to decrease cost of compliance.</p>
80.D		<p>D. An operator who uses a guarantee to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby</p>	<p>[D.] An operator who uses a guarantee to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby</p>

		<p>trust fund in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130.</p>	<p>trust fund in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130. [Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be paid directly to the Board in accordance with instructions from the Board under 9VAC25-640-180.</p> <p>Deleted all of 80 D because this is redundant with 180.B.</p> <p>Revision made pursuant to comment from AG's office.</p>
<p>90.A-D</p>	<p>90.E</p>	<p>A. 1. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or group self-insurance pool.</p> <p>2. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.</p> <p>3. Group self-insurance pools shall comply with §62.1-44.34:16 of the Code of Virginia and applicable State Corporation Commission Bureau of Insurance regulations.</p> <p>B. Each insurance policy shall be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.</p> <p>C. Each insurance policy shall be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines</p>	<p>A. 1. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or <u>entering into a member agreement with a</u> group self-insurance pool.</p> <p>2. Such <u>liability</u> insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.</p> <p>3. Group self-insurance pools shall comply with §62.1-44.34:16 of the Code of Virginia and <u>applicable the rules promulgated by the State Corporation Commission Bureau of Insurance regulations designated as Chapter 385 of Title 14 of the Virginia Administrative Code and entitled "Rules Governing Aboveground Storage Tank and Pipeline Operators Group Self-Insurance Pools" (14VAC5-385).</u></p> <p>B. Each <u>liability</u> insurance policy shall be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets shall be replaced with the relevant</p>

		<p>insurer in the Commonwealth of Virginia.</p> <p>D. Each insurance policy shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of containment and clean up as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer or group. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.</p>	<p>information and the brackets deleted.</p> <p>C. Each <u>liability</u> insurance policy shall be issued by an insurer or a group self-insurance pool that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.</p> <p>D. <u>Each group self-insurance pool must be licensed in accordance with 14VAC5-385, and any coverage provided by such a pool shall be evidenced by a certificate of group self-insurance worded identically as specified in Appendix VIII, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.</u></p> <p><u>E. Each liability insurance policy or group self-insurance plan shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of containment and clean up as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer or group self-insurance pool. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.</u></p> <p>Language modified to clarify how operators can use a group self-insurance pool to demonstrate financial responsibility.</p>
<p>90.A.3</p>		<p>3. Group self-insurance pools shall comply with §<u>62.1-44.34:16</u> of the Code of Virginia and applicable State Corporation Commission</p>	<p>3. Group self-insurance pools shall comply with §<u>62.1-44.34:16</u> of the Code of Virginia and applicable the <u>rules promulgated by the State</u></p>

		Bureau of Insurance regulations.	<p>Corporation Commission Bureau of Insurance regulations designated as Chapter 385 of Title 14 of the Virginia Administrative Code and entitled "<u>Rules Governing Aboveground Storage Tank and Pipeline Operators Group Self-Insurance Pools</u>" (14VAC5-385).</p> <p>Added language provides clarification of governing authority under which group self-insurance polls operate.</p>
100.D		<p>D. The operator who uses a surety bond to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130.</p>	<p>D. The operator who uses a surety bond to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130.</p> <p>Deleted reference to standby trust fund.</p>
100.D		<p>D. The operator who uses a surety bond to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130.</p>	<p>[D.] The operator who uses a surety bond to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the surety bond is acquired. [Under the terms of the bond, all amounts paid by the surety under the bond will be] deposited directly into the standby trust fund in accordance with instructions from the Board under [paid directly to the Board in accordance with instructions from the Board under 9VAC25-640-180.] This standby trust fund shall meet the requirements specified in 9VAC25-640-130.</p> <p>Deleted all of 100 D because this is redundant with 180.B.</p>

			Revision made pursuant to comment from AG's office.
110.C		C. An operator who uses a letter of credit to satisfy the requirements of 9VAC25-640-50 also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130.	<p>C. An operator who uses a letter of credit to satisfy the requirements of 9VAC25-640-50 also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Board will be deposited by the issuing institution directly into the standby trust fund [paid by the issuing institution directly to the Board in accordance with instructions from the Board under 9VAC25-640-180.] This standby trust fund shall meet the requirements specified in 9VAC25-640-130.</p> <p>Deleted reference to standby trust fund.</p>
110.C		C. An operator who uses a letter of credit to satisfy the requirements of 9VAC25-640-50 also shall establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Board will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130.	<p>[C.] An operator who uses a letter of credit to satisfy the requirements of 9VAC25-640-50 also shall establish a standby trust fund when the letter of credit is acquired. [Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Board will be] deposited by the issuing institution directly into the standby trust fund [paid by the issuing institution directly to the Board in accordance with instructions from the Board under 9VAC25-640-180.] This standby trust fund shall meet the requirements specified in 9VAC25-640-130.</p> <p>Deleted all of 110. C because this is redundant with 180.B.</p> <p>Revision made pursuant to comment from AG's office.</p>
110.D		D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the operator by certified mail of its	D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the operator and the Board by certified

		<p>decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the operator receives the notice, as evidenced by the return receipt.</p>	<p>mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the operator <u>and the Board</u> receives the notice, as evidenced by the return receipt <u>receipts</u>.</p> <p>The Board must be notified any time a financial responsibility mechanism is cancelled or not renewed.</p>
120		<p>B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the operator. The wording of the trust agreement shall be identical to the wording specified in Appendix VII and shall be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.</p>	<p>B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the operator. The wording of the trust agreement shall be identical to the wording specified in Appendix VII and shall be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.</p> <p>Removed reference to Appendix VIII, which has been deleted from the regulation.</p>
130		130	Standby trust fund deleted from regulation. Section repealed.
150.A		<p>A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the operator.</p> <p>Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt.</p> <p>Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the operator</p>	<p>A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the operator <u>and the Board</u>.</p> <p>Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the operator <u>and the Board</u> receives the notice of termination, as evidenced by the return receipt <u>receipts</u>.</p> <p>Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after</p>

		<p>receives the notice of termination, as evidenced by the return receipt. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the operator receives the notice of termination, as evidenced by the return receipt.</p>	<p>the date on which the operator <u>and the Board</u> receives the notice of termination, as evidenced by the return receipt <u>receipts</u>. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the operator <u>and the Board</u> receives the notice of termination, as evidenced by the return receipt <u>receipts</u>.</p> <p>The Board must be notified any time a financial responsibility mechanism is cancelled or not renewed.</p>
<p>160.A and B</p>		<p>A. Except as specified in 9VAC25-640-170 B 7, an operator of a facility existing as of March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001.</p> <p>B. Except as specified in 9VAC25-640-170 B 7, an operator of a facility which does not exist as of March 2, 2001, shall comply with the requirements of this chapter at least 30 days before the facility commences operation or by May 1, 2001, whichever is later.</p>	<p>Sections A and B deleted.</p> <p>Provisions both contradict and are redundant with 40.</p>
<p>160.A</p>		<p>A. Except as specified in 9VAC25-640-170 B 7, an operator of a facility existing as of March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001.</p>	<p>A. Except as specified in 9VAC25-640-170 B 7, an operator of a facility existing as of March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001. <u>An operator shall submit the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility to the Board within 30 days after the operator identifies or confirms a discharge from an aboveground storage tank or pipeline required to be reported under 9VAC25-90-210. For all subsequent discharges within the same period of time for which the documents submitted according to this subsection are still effective, the operator shall submit a letter that identifies the operator's name</u></p>

			<p><u>and address and the aboveground storage tank's or pipeline's location by site name, street address, Board incident designation number and a statement that the financial responsibility documentation previously provided to the Board is currently in force.</u></p> <p>Revision clarifies circumstances surrounding discharges under which operator shall submit evidence of financial reasonability or other relevant documentation to the Board.</p>
160.A		<p>A. Except as specified in 9VAC25-640-170 B 7, an operator of a facility existing as of March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001.</p>	<p>A. Except as specified in 9VAC25-640-170 B 7, an operator of a facility existing as of March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001. An operator shall submit the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility to the Board within 30 days after the operator identifies or confirms a discharge from an aboveground storage tank or pipeline required to be reported under 9VAC25- [90 91-210] . For all subsequent discharges within the same period of time for which the documents submitted according to this subsection are still effective, the operator shall submit a letter that identifies the operator's name and address and the aboveground storage tank's or pipeline's location by site name, street address, Board incident designation number and a statement that the financial responsibility documentation previously provided to the Board is currently in force.</p> <p>Public commenter noted that 9VAC25-90-210 has been repealed and replaced with 9VAC25-91.</p> <p>This revision, which has been made during the current (final) stage of the amendment process, affects language that was initially</p>

			added during the proposed stage of the process.
170.B.3		3. An operator using a guarantee, surety bond, or letter of credit shall maintain the signed standby trust fund agreement and any amendments to the agreement.	3. An operator using a guarantee, surety bond, or letter of credit shall maintain the signed standby trust fund agreement and any amendments to the agreement. Removed requirement that operators who demonstrate with a surety bond, guarantee, or letter of credit maintain a copy of a standby trust at their facility.
170.B.5		7. For subsequent annual updates required under 9VAC25-640-160:	7. 5. For subsequent annual updates <u>submissions</u> required under 9VAC25-640-160: In order to be clear, section 170, refers back to 160. Section 160 pertains to circumstances regarding submissions, not updates, of financial responsibility documents. This should also refer to submissions, not updates.
170.B.5		7. For subsequent annual updates required under 9VAC25-640-160:	7. 5. For [subsequent annual] updates <u>submissions</u> required under 9VAC25-640-160: Revision made pursuant to comment from AG's. Section 160 does not mention annual submissions of financial responsibility documents. In order to be clear, section 170, which in this excerpt refers back to 160, should simply refer generally to submissions, not specifically to annual submissions. This language was initially revised (see panel directly above) during the proposed stage of the process.
170.B.5.c		c. The operator need not obtain a new standby trust agreement, provided the financial assurance mechanism remains the same;	c. The operator need not obtain a new standby trust agreement, provided the financial assurance mechanism remains the same; This revision has been made to remove an unnecessary reference to the standby trust agreement, which has been deleted from the regulation.
170.B.5.a, b, c, d, and e		a. The operator may maintain an endorsement, a rider or a notice of	a. The operator [may maintain <u>must provide</u>] an [<u>insurance</u>]

		<p>extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit or insurance policy, provided the form of the endorsement, rider or notice of extension is approved by the Board;</p> <p>b. The operator need not obtain a new original guarantee or trust fund, provided the same mechanism is to continue to act as the operator's demonstration mechanism for the subsequent year or years;</p> <p>c. The operator need not obtain a new standby trust agreement, provided the financial assurance mechanism remains the same;</p> <p>d. c. The operator must maintain a new original mechanism as specified in subdivision 2 of this subsection;</p> <p>e. d. The operator need not obtain a new original certification of acknowledgment, provided the associated trust agreement has not changed;</p> <p>f. e. The operator must maintain a new original certification of financial responsibility.</p>	<p>endorsement [or certificate, a rider-] or a notice of extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit [or insurance policy], provided the form of the [insurance] endorsement [or certificate, rider-] or notice of extension is approved by the Board;</p> <p>b. The operator need not [obtain provide] a new original guarantee or trust fund, provided the same mechanism is to continue to act as the operator's demonstration mechanism for the subsequent year or years;</p> <p>e. The operator need not obtain a new standby trust agreement, provided the financial assurance mechanism remains the same;</p> <p>d. c. The operator must [maintain provide] a new original mechanism as specified in subdivision 2 of this subsection;</p> <p>e. d. The operator need not [obtain provide] a new original certification of acknowledgment, provided the associated trust agreement has not changed;</p> <p>f. e. The operator must [maintain provide] a new original certification of financial responsibility.</p> <p>170.B.5 prescribes the various requirements of owners for submissions of financial responsibility documentation. Also, the revision of 170.B.5.a clarifies what forms of documentation must be provided as evidence of proper tank insurance coverage.</p> <p>Revision made pursuant to comment from AG's office.</p>
170.B.6		6. An operator using a trust agreement or who is required to prepare a standby trust agreement	6. An operator using a trust agreement or who is required to prepare a standby trust agreement

		<p>pursuant to 9VAC25-640-130 shall maintain a certification of acknowledgment worded identically as specified in Appendix VIII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.</p>	<p>pursuant to 9VAC25-640-130 shall maintain a certification of acknowledgment worded identically as specified in Appendix VIII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.</p> <p>Removed reference to Appendix VIII, which has been deleted from regulation.</p>
<p>180 .A and B</p>		<p>A. The Board shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Board, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:</p> <p>1. a. The operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and</p> <p>b. The Board determines or suspects that a discharge from an aboveground storage tank or pipeline covered by the mechanism has occurred and so notifies the operator, or the operator has notified the Board pursuant to 9VAC25-91-10 et seq. of a discharge from an aboveground storage tank or pipeline covered by the mechanism; or</p> <p>2. The conditions of subsection B of this section are satisfied.</p> <p>B. The Board may draw on a standby trust fund when the Board makes a final determination that a discharge has occurred and immediate or long-term containment and/or clean up for the discharge is needed, and the operator, after appropriate notice and opportunity to comply, has not conducted containment and clean up as required under 9VAC25-91-10 et seq.</p>	<p>A. The Board shall <u>may</u> require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the Board, <u>pay to the Board an amount</u> up to the limit of funds provided by the financial assurance mechanism, into the standby trust if:</p> <p>1. a. The operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and</p> <p>b. The Board determines or suspects that a discharge from an aboveground storage tank or pipeline covered by the mechanism has occurred and so notifies the operator, or the operator has notified the Board pursuant to 9VAC25-91-10 et seq. <u>9VAC25-91</u> of a discharge from an aboveground storage tank or pipeline covered by the mechanism; or</p> <p>2. The conditions of subsection B of this section are satisfied.</p> <p>B. <u>The Board shall deposit the financial assurance funds forfeited pursuant to subsection A of this section into the Virginia Petroleum Storage Tank Fund.</u> The Board may draw on a standby trust fund when the Board use the financial responsibility funds obtained pursuant to subsection A of this section to conduct containment and cleanup when it makes a final determination that a discharge has</p>

			<p>occurred and immediate or long-term containment and/or clean up for the discharge is needed, and the operator, after appropriate notice and opportunity to comply, has not conducted containment and clean up as required under 9VAC25-91-10 et seq. <u>9VAC25-91.</u></p> <p>Added language to require a guarantor, surety, or institution issuing a letter of credit to pay funds to the Board when directed rather than into a standby trust fund. Also added language directing the Board to place funds paid to it into the Virginia Petroleum Storage Tank Fund pending disbursement for purposes of conducting containment and cleanup.</p>
200.B		<p>B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the operator by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-640-80.</p>	<p>B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the operator [<u>and the Board</u>] by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-640-80.</p> <p>The Board should always be notified in the event of the bankruptcy or imminent failure of a guarantor or provider of a financial responsibility mechanism.</p> <p>Revision made pursuant to comment from AG's office.</p>
210.A		<p>A. If at any time after a standby trust is funded upon the instruction of the Board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the operator shall by the anniversary date of the financial mechanism from which the funds were drawn:</p>	<p>A. If at any time after a standby trust is funded upon the instruction of the Board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required <u>is drawn upon by instruction of the Board and the Board has expended all or part of the funds for containment and cleanup</u>, the operator shall by the anniversary</p>

		<p>1. Replenish the value of financial assurance to equal the full amount of coverage required; or</p> <p>2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.</p>	<p>date of the financial mechanism from which the funds were drawn <u>shall</u>:</p> <p>1. Replenish the value of financial assurance to equal the full amount of coverage required; or</p> <p>2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have <u>the face value of the letter of credit, surety bond, or guarantee has</u> been reduced.</p> <p>Added language to clarify how a letter of credit or surety bond will be replenished by the operator once it has been cashed by the Board.</p>
220	220.A,B,C,D,E,F,G,H,I,J, K	The fund may be used for all uses authorized by <u>§62.1-44.34:11</u> of the Code of Virginia in accordance with the requirements specified in 9VAC25-590-210.	Deleted text and added parts A-K 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.
230		<p>All requirements of this chapter for notification to the State Water Control Board shall be addressed as follows:</p> <p>Director Department of Environmental Quality 629 E. Main Street P.O. Box 10009 Richmond, Virginia 23240-0009.</p>	<p>All requirements of this chapter for notification to the State Water Control Board shall be addressed as follows:</p> <p>Director Department of Environmental Quality 629 E. Main Street P.O. Box 10009 <u>1105</u> Richmond, Virginia 23240-0009 <u>23218</u>.</p> <p>Revised to provide correct address for mailing of notices to the State Water Control Board.</p>
250.A		A. No later than March 2, 2004, the department shall perform an analysis on this chapter and provide the Board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives that would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current	A. No later than March 2, 2004, <u>Within four years after the effective date of this chapter,</u> the department shall perform an analysis on this chapter and provide the Board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives that would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the

		state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.	effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities. Revised for consistency with Executive Order 36.
Appendix I		No mention of financial responsibility requirements under 9VAC25-590	3. <u>Amount of annual underground storage tank (UST) aggregate coverage being assured by a financial test and/or guarantee pursuant to 9 VAC 25-590</u> 4. <u>Total AST/Pipeline/UST financial responsibility obligations assured by a financial test and/or guarantee (Sum of lines 1, and-2 and 3)</u> Added language to account for underground storage tank financial responsibility coverage when determining whether an operator's tangible net worth is sufficient to qualify to use this mechanism to demonstrate financial responsibility.
Appendix II		In the event that operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a discharge has occurred at an aboveground storage tank and/or pipeline covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund in accordance with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above. In the event that the State Water Control Board determines that	In the event that operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a discharge has occurred at an aboveground storage tank and/or pipeline covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall fund a standby trust fund <u>pay the funds to the State Water Control Board</u> in accordance with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above.

		<p>operator has failed to perform containment and clean up for discharges arising out of the operation of the above-identified tank(s) and/or pipelines in accordance with 9VAC25-91-10 et seq., the guarantor upon written instructions from the State Water Control Board shall fund a standby trust in accordance with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above.</p>	<p>In the event that the State Water Control Board determines that operator has failed to perform containment and clean up for discharges arising out of the operation of the above-identified tank(s) and/or pipelines in accordance with 9VAC25-91-10 et seq. <u>9VAC25-91</u>, the guarantor upon written instructions from the State Water Control Board shall fund a standby trust <u>pay the funds to the State Water Control Board</u> in accordance with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above.</p> <p>Added language to require the guarantor to give notice to the Board in the event of cancellation and deleted reference to standby trust fund.</p>
<p>Appendix III</p>		<p>d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.</p>	<p>d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured <u>and the State Water Control Board</u>. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured <u>and the State Water Control Board</u>.</p> <p>Removed references throughout document to group self-insurance pools and added requirement to give Board notice in the event of cancellation.</p>
<p>Appendix IV</p>		<p>d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for non-payment of premium or misrepresentation by the insured,</p>	<p>d. Cancellation or any other termination of the insurance by the ["Insurer" or "Pool"], except for non-payment of premium or misrepresentation by the insured,</p>

		will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured.	will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured <u>and the State Water Control Board</u> . Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured <u>and the State Water Control Board</u> . Removed references throughout document to group self-insurance pools and added requirement to give Board notice in the event of cancellation.
Appendix V		Period of coverage: _____	Period of coverage <u>Effective date</u> : _____ Revised "Period of coverage" to "Effective date" to clarify that surety bond is not self-terminating.
Appendix V		Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;	Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance; Deleted requirement to establish standby trust fund.
Appendix V		Upon notification by the State Water Control Board that the Principal has failed to contain and clean up in accordance with 9VAC25-91-10 et seq. and the State Water Control Board's instructions, the Surety(ies) shall perform containment and clean up in accordance with 9VAC25-91-10 et seq. and the Board's instructions, or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the State Water Control Board under 9VAC25-640-180.	Upon notification by the State Water Control Board that the Principal has failed to contain and clean up in accordance with 9VAC25-91-10 et seq. <u>9VAC25-91</u> and the State Water Control Board's instructions, the Surety(ies) shall <u>either</u> perform containment and clean up in accordance with 9VAC25-91-10 et seq. <u>9VAC25-91</u> and the Board's instructions, or place <u>pay</u> funds in an amount up to the annual aggregate penal sum into to the standby trust fund <u>to the State Water Control Board</u> as directed by the State Water Control Board under 9VAC25-640-180. <u>The State Water Control Board in its sole discretion may elect to require the surety to</u>

			<p><u>pay the funds or to perform containment and cleanup up to the annual aggregate penal sum.</u></p> <p>Revised to clarify that payment or performance obligations shall be decided by the Board.</p>
<p>Appendix V</p>		<p>The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.</p>	<p><u>The Surety(ies) submit to the jurisdiction of the Circuit Court of the City of Richmond to adjudicate any claim against it (them) by the State Water Control Board and waive any objection to venue in that court. Interest shall accrue at the judgment rate of interest on the amount due beginning seven days after the date of notification by the State Water Control Board. In the event the State Water Control Board shall institute legal action to compel performance by the Surety under this agreement, the Surety shall be liable for all costs and legal fees incurred by the Board to enforce this agreement.</u></p> <p>The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond. <u>The Surety(ies) hereby agrees that it(they) has been notified of all material facts regarding this contract of suretyship and waiver(s) any defense founded in concealment of material facts. The Surety(ies) represents that the person executing this agreement has full authority to execute the agreement. Surety(ies) hereby waive(s) any right to notice of breach or default of the Principal. The State Water Control Board may enforce this agreement against the Surety(ies) without bringing suit against the Principal. The State Water Control Board shall not be required to exhaust the assets of the Principal before demanding performance by the Surety. No lawful act of the State</u></p>

			<p><u>Water Control Board, including without limitation any extension of time to the Principal, shall serve to release any surety, whether or not that act may be construed to alter or vary this agreement. Release of one cosurety shall not act as the release of another. This agreement shall be construed to affect its purpose to provide remedial action for discharges of petroleum.</u></p> <p>Added language to clarify sureties' legal responsibilities and obligations in the event of a demand for payment or legal action.</p>
<p>Appendix V</p>		<p>The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.</p>	<p>The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail <u>or overnight courier</u> to the Principal <u>and the State Water Control Board</u> , provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal <u>and the State Water Control Board</u>, as evidenced by the return receipt.</p> <p>The Board must be notified any time a financial responsibility mechanism is cancelled or not renewed.</p>
<p>Appendix VI</p>		<p>This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify operator by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that operator is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by operator, as shown on the signed return</p>	<p>This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify operator <u>and the State Water Control Board</u> by certified mail <u>or overnight courier</u> that we have decided not to extend this letter of credit beyond the current expiration date. In the event that operator <u>is and the State Water Control Board</u> are so notified, any unused portion of the credit shall be available upon presentation of</p>

		<p>receipt.</p> <p>Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of operator in accordance with your instructions.</p>	<p>your sight draft for 120 days after the date of receipt by operator <u>the State Water Control Board</u>, as shown on the signed return receipt, <u>or until the current expiration date, whichever is later.</u></p> <p>Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of operator <u>pay to you the amount of the draft promptly and directly</u> in accordance with your instructions.</p> <p>Added requirement to give Board notice in the event of cancellation. Clarified that when properly notified of non-renewel, the letter of credit may be drawn on until at least the end of its current period. Deleted reference to standby trust fund and outlined new payment procedure.</p>
Appendix VII		<p>Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the aboveground storage tanks and/or pipelines identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);</p>	<p>Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the aboveground storage tanks and/or pipelines identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);</p> <p>Deleted reference to standby trust.</p>
Appendix VIII		Appendix VIII	Deleted Appendix VIII, Certificate of Acknowledgment; certificate no longer required.
Appendix VIII		None	Added new certificate of insurance Appendix pertaining to group self-insurance pools.

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 Department solicited public input during the review process and has been prepared to consider alternatives such as the establishment of less stringent compliance and reporting requirements and less stringent schedules or deadlines for compliance or reporting requirements. However, no comments suggesting changes in these areas were received during either of the two comment periods. To date, the only alternative the Department has considered has been elimination of the entire regulation. This is not an option because the regulations have been promulgated pursuant to the specific statutory requirements of the State Water Control Law (Chapter 3.1, Title 62.1, Section 44.34, Articles 10 and 11 of the Code of Virginia), specifically, § 62.1-44.34:16D

As for the changes that have been made, the only substantive effect of the current amendment is to diminish the economic burden placed by the regulatory requirements upon small businesses. The current amendment diminishes this burden to the greatest extent possible without weakening the integrity of the regulation as prescribed under the direction of the statute.

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 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.