



Virginia
Regulatory
Town Hall

Periodic Review and Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Environmental Quality
VAC Chapter Number:	590
Regulation Title:	Petroleum Underground Storage Tank Financial Responsibility Requirements
Action Title:	Proposed Regulatory Amendment
Date:	April 29, 2002

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 underground storage tanks to demonstrate they have the financial resources available to pay for the costs of cleanups and third party lawsuits in the event of a release from their tanks. Please see attached fact sheet for more detailed information regarding program requirements.

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.

The legal basis for the Virginia Petroleum Underground Storage Tank (UST) Financial Responsibility Requirements Regulation, 9 VAC 25-590-10 *et seq.*, is the State Water Control Law (Title 62.1, Chapter 3.1, Articles 9 and 10 of the Code of Virginia). Specifically, § 62.1-44.34:9(8) authorizes the State Water Control Board to promulgate such regulations as may be necessary to carry out its powers and duties with regard to USTs in accordance with federal laws and regulations. Further, § 62.1-44.34:12(A) of the State Water Control Law provides the direct authority to the State Water Control Board to promulgate regulations that conform to the federal UST financial responsibility requirements of 42 U.S.C § 6991b (d) and any regulations adopted thereunder.

The Virginia Petroleum UST Financial Responsibility Requirements Regulation substantially duplicates the federal UST financial responsibility requirements. As provided by federal law, the Virginia regulation (9 VAC 25-590-210) allows tank owners/operators to use the Virginia Petroleum Storage Tank Fund (VPSTF) as a means for meeting the financial responsibility demonstration amount that is in excess of the financial responsibility amount required under VPSTF's sliding scale financial responsibility requirement. Owners/operators may use VPSTF in combination with one of six allowable demonstration mechanisms in order to satisfy the financial responsibility demonstration requirements.

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.

The Virginia Department of Environmental Quality (Department) did not receive any comments in response to the January 28, 2002, publication of periodic review in the Virginia Register (public comment period closed February 19, 2002). As a result, no critical issues or particular areas of concern were identified in the regulation. The Department will, if requested by the public, establish an informal advisory group for purposes of assisting in the development of proposed changes to the Virginia Petroleum UST Financial Responsibility Requirements Regulation. In addition, the Department will seek public input regarding any proposed alternatives as part of the regulatory development process. The Department will welcome input that continues to meet the goals of the UST financial responsibility 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.

The specific and measurable goals of the financial responsibility regulation are to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish procedures and requirements for owners/operators to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. The regulation meets these goals primarily by establishing the Virginia Petroleum Underground Storage Tank Fund (VPSTF). Owners/operators can use the VPSTF to demonstrate the bulk of their financial responsibility requirement and are, themselves, responsible for only a small portion of the total demonstration requirement. The existence of the VPSTF, therefore, reduces the economic burden of complying with the regulation substantially.

The Virginia Petroleum UST 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.

The Department is examining alternatives that will provide owner/operators with more affordable ways to demonstrate UST 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 costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish requirements for owners/operators to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. One of the alternatives the Department has considered is the elimination of the regulation; however, the UST financial responsibility regulations have been developed under the specific statutory direction of the Virginia Code and must, therefore, remain intact. In addition to this alternative, the Department will explore other alternatives which 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.

The Department is recommending the UST financial responsibility regulations be amended to provide owners/operators a more affordable way to demonstrate UST 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.

The Department is exploring alternative methods for achieving compliance with the UST 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 which do not affect the regulatory requirements. 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 UST 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 Virginia Petroleum UST Financial Responsibility Requirements (9 VAC 25-590-10 *et al*), owners/operators of regulated petroleum USTs must demonstrate they have the financial resources available to pay for the costs of cleanups and third party lawsuits in the event of a release from a regulated tank. As part of the proposed regulatory action, the Department is exploring alternative methods for achieving compliance with the UST 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 which do not affect the regulatory requirements. 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

The main purpose of pursuing a regulatory amendment to the Virginia Petroleum Storage Tank Financial Responsibility Requirements is to identify less burdensome and less intrusive alternatives for achieving compliance with the regulation. While the current regulation does provide significant relief to owners/operators regarding financial responsibility demonstration through the Virginia Petroleum Storage Tank Fund, 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 UST financial responsibility regulations. The specific and measurable goals of the regulation are to protect public health and/or welfare with the least possible costs and intrusiveness to the citizens and businesses of the Commonwealth and to establish procedures and requirements for owners/operators to demonstrate financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs. Through the regulatory development process, the Department will explore alternative methods for achieving compliance with the UST 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 also propose administrative changes to the regulation which 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.

Once the Department identifies suitable alternatives to include in the proposed amendments, the Department must seek approval from the U.S. Environmental Protection Agency in order to maintain state supremacy in operating the Petroleum UST financial responsibility program.

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.

The Department is exploring alternative methods for achieving compliance with the UST 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 also propose administrative changes to the regulation which 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.

The Department will research current industry practices to identify alternative methods for achieving compliance with the UST 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 elimination of the entire regulation. The Department has determined, however, that the UST financial responsibility regulations have been developed under the specific statutory direction of the Virginia Code and, therefore, must remain intact.

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.

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.

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.

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