

**CHAPTER 101**

**TANK VESSEL OIL DISCHARGE CONTINGENCY PLAN AND FINANCIAL  
RESPONSIBILITY REQUIREMENTS**

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

(Effective Date: June 24, 1998)

**Modified for 2004 Statute Changes**

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**9 VAC 25-101-10. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the State Water Control Board.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Department" means the Department of Environmental Quality.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Net worth" means the amount of all assets of a tank vessel operator located in the United States, less all liabilities.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes,

crude oils and all other liquid hydrocarbons regardless of specific gravity. For the purpose of this chapter only, this definition does not include nonpetroleum hydrocarbon-based animal and vegetable oils or petroleum, including crude oil or any fraction thereof which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC § 9601) and which is subject to the provisions of that Act.

"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 vessel.

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

"Tank vessel" means any vessel used in the transportation of oil in bulk as cargo. For the purpose of this chapter, this definition includes tankers, tank ships, tank barges and combination carriers when carrying oil. It does not include vessels carrying oil in drums, barrels, portable tanks or other packages or vessels carrying oil as fuel or stores for that vessel. For the purpose of this chapter only, this definition does not include public vessels.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

"Working capital" means the amount of current assets of a tank vessel operator located in the United States, less all current liabilities.

**9 VAC 25-101-20. Applicability.**

This chapter applies to all tank vessels transporting or transferring oil upon state waters having a maximum storage, handling or transporting capacity of equal to or greater than 15,000 gallons of oil.

**9 VAC 25-101-30. Purpose.**

~~The purpose of~~ This chapter ~~is to provide guidance~~ implements the requirement of VA. Code § 62.1-44.34:15 for the development of tank vessel contingency plans ~~and to establish requirements for financial responsibility on the part of~~ by operators of tank vessels transporting or transferring oil as cargo upon state waters. Contingency plans must address concerns for the effect of oil discharges on the environment as well as considerations of public health and safety. The oil discharge contingency plans will ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas; to respond to the threat of an oil discharge; and to contain, clean up and mitigate an oil discharge within the shortest feasible time. This chapter also provides acceptable means of demonstrating the ~~required~~ level of financial responsibility required by VA. Code § 62.1-44.34:16, therefore providing the Commonwealth with the ~~necessary~~ assurance that an operator of a tank vessel has the necessary financial stability to conduct a proper response to a discharge of oil.

**9 VAC 25-101-35. Oil discharge contingency plan and vessel response plan requirements for state waters.**

No operator of a tank vessel shall cause or permit a tank vessel to transport or transfer oil in state waters unless an oil discharge contingency plan applicable to the tank vessel is filed with and approved by the Board or a Vessel Response Plan applicable to the tank vessel has been

approved by the United States Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USC §1321(j).

**9 VAC 25-101-40. Board oil discharge contingency plan review and approval.**

**NOTE: This section does not apply to vessels for which a Vessel Response Plan has been approved by the US Coast Guard under § 4202 of the federal Oil Pollution Act of 1990, 33 USC § 1321(j)(5). See 9 VAC 25-101-40.**

A. Tank vessel oil discharge contingency plans shall provide for the use of the best available technology (economically feasible, proven effective and reliable and compatible with the safe operation of the vessel) at the time the plan is submitted for approval, be written in English, and, in order to be approvable, shall contain, at a minimum, the following ~~requirements~~ information:

1. The vessel name, country of registry, identification number, date of build and certificated route of the vessel.
2. The names of the vessel operators including address and phone number.
3. If applicable, name of local agent, address and phone number.

4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil, or groups of oil with similar characteristics, transported or transferred by the tank vessel.

To be equivalent, the submission must contain the following:

- a. Generic or chemical name of the oil;
- b. Hazards involved in handling the oil; and
- c. A list of firefighting procedures and extinguishing agents effective with fires involving each oil or groups of oil demonstrating similar hazardous properties which require the same firefighting procedures.

5. A complete listing, including 24-hour phone numbers, of all federal, state and local agencies required to be notified in event of a discharge.

6. The position title of the individual(s) responsible for making the required notifications and a copy of the notification check-off list. ~~This~~ The individual(s) must be fluent in English.

7. The position title, address and phone number of the individual(s) authorized to act on behalf of the operator to implement containment and cleanup actions. ~~This~~ The

individual(s) must be fluent in English and shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated.

8. The position title of the individual(s) designated by the operator to ensure compliance during containment and cleanup of a discharge, with applicable federal, state and local requirements for disposal of both solid and liquid wastes.

9. A copy of the valid evidence of financial responsibility ~~approved by the board~~ pursuant to 9 VAC 25-101-~~5045~~.

10. A complete description of the vessel including vessel drawings providing a complete view of the location of all cargo tanks as well as the location of fuels and other oils carried in bulk by the vessel.

11. A complete description of each oil transfer system on the vessel, including:

a. A line diagram of the vessel's oil transfer piping, including the location of each valve, pump, control device, vent, safety device and overflow;

b. The location of the shutoff valve or other isolation device that separates any bilge or ballast system from the oil transfer system; and,



c. The maximum pressure for each oil transfer system.

12. Identification and ensurance by contract, or other means acceptable to the board, of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. This contract or agreement shall ensure a certain response within the shortest feasible time. The department will accept a letter of understanding between the operator and response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by subdivision 14 of 9 VAC 25-101-40 ~~this subsection~~ shall be included unless these capabilities are already on file with the department.

13. Assessment of the worst case discharge, including measures to limit the outflow of oil, response strategy and operational plan. For the purpose of this chapter, the worst case discharge for a tank vessel is a discharge in adverse weather conditions of its entire cargo.

14. Inventory of onboard containment equipment, including specification of quantity, type, location, time limits for gaining access to the equipment, and, if applicable, identification of tank vessel personnel trained in its use.

15. If applicable, a copy of the United States Coast Guard approved oil transfer procedures and International Oil Pollution Prevention Certificate (IOPP).

16. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator to mitigate or prevent the discharge, or the substantial threat of a discharge.

17. The tank vessel's cargo inventory control procedures. Tank vessel operators shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards.

18. A post discharge review procedure to assess the discharge response in its entirety.

B. 4. All nonexempt tank vessel operators shall file with the department the Application for Approval of a Tank Vessel Contingency Plan form available from the department for approval of the contingency plan. This form identifies the tank vessel operator by name and address and provides information on the tank vessel or vessels and shall be submitted with the required contingency plan and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form which certifies to the board that the information is true and accurate. If the operator is a corporation, the application form

must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the application form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the application form must be signed by a general partner or the sole proprietor.

~~2. A tank vessel operator who seeks approval of the contingency plan in accordance with subsection J of this section must complete and sign the Application for Approval of a Tank Vessel Contingency Plan form available from the department upon the effective date of this chapter or upon expiration of any contingency plan approval previously issued by the department.~~

~~3. Tank vessel operators may delegate signatory authority to an agent for notification of significant changes to the contingency plan and any notifications in accordance with subsection J of this section by completing and signing the Tank Vessel Agent Designation form available from the department. This form identifies the tank vessel operator, the designated agent by name and address, and the respective tank vessel or vessels covered by this designation.~~

C. Contingency plans must be filed with and approved by the board. A signed original shall be submitted to the department at the address specified in 9 VAC 25-101-40. ~~subsection F of this section~~. A copy of the original with the tank vessel specific information and the approval letter shall be retained on the tank vessel and shall be readily available for inspection. An operator of a

tank vessel whose normal operating route does not include entry into state waters shall certify to the board, within 24 hours of entering state waters, that the operator has ensured by contract or other means acceptable to the board, the availability of personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent the discharge or the substantial threat of a discharge. The operator shall submit a contingency plan to the board for approval in accordance with this chapter prior to the next entry of the tank vessel into state waters.

D. An operator of multiple tank vessels may submit a single fleet contingency plan. The plan shall contain vessel specific information required by 9 VAC 25-101-40~~this section~~ for each vessel. The vessel specific information shall be included in appendices to the plan. This plan shall be separate from any required facility contingency plan.

E. Oil discharge contingency plans shall be reviewed, updated if necessary, and resubmitted to the board for approval every 60 months unless significant changes occur sooner. Operators must notify the department of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a significant change includes the following:

1. A change of operator of the tank vessel or individual authorized to act on behalf of the operator;

2. A substantial increase in the maximum storage or handling capacity of the tank vessel;
3. A material decrease in the availability of private personnel or equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge;
4. A change in the type of product transported or transferred in or by any tank vessel covered by the plan for which a MSDS or its equivalent has not been submitted; or
5. The addition of a tank vessel to a single fleet contingency plan provided this requirement can be met by submittal of a new or amended appendix to the plan.

Renewals for expiring plans shall be submitted to the board for review and approval not less than 90 days prior to expiration of the current plan.

- F. ~~Updated plans shall be submitted to the board for review and approval not less than 90 days prior to expiration of the current plan.~~ All applications and written communications concerning changes, submissions and updates of plans required by this chapter ~~including copies of any subsequently reissued or renewed Vessel Response Plan (VRP) approval letters submitted in accordance with subsection J of this section,~~ with the exception of applications and submissions accompanied by fees addressed in 9 VAC 25-101-40.J~~subsection K~~ of this section, shall be addressed as follows:

Mailing Address:

Virginia Department of Environmental Quality  
Office of Spill Response and Remediation  
P.O. Box 10009  
Richmond, VA 23240

Location Address:

Virginia Department of Environmental Quality  
Office of Spill Response and Remediation  
629 East Main Street  
Richmond, VA 23219

All applications and submissions accompanied by fees as addressed in 9 VAC 25-101-40.J  
~~subsection K~~ of this section shall be sent to the address listed in 9 VAC 25-101-40.J.~~subdivision~~  
~~K2~~.

G. An oil discharge exercise may be required by the board to demonstrate the tank vessel's  
ability to implement the contingency plan. The department will consult with the operator of the  
vessel prior to initiating an exercise. Where appropriate, the department will ensure coordination  
with federal agencies prior to initiation of an exercise.

H. The board may, after notice and opportunity for a conference pursuant to ~~§ 9-6.14:11 2.2-~~  
4019 of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan if  
it determines that:

1. The plan as submitted fails to provide sufficient information for the department to process, review and evaluate the plan or fails to ensure the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of a discharge, and to contain and cleanup an oil discharge within the shortest feasible time;
2. A significant change has occurred in the operation of the tank vessel covered by the plan;
3. The tank vessel's discharge experience or its inability to implement its plan in an oil spill discharge exercise demonstrates a necessity for modification; or
4. There has been a significant change in the best available technology since the plan was approved.

I. The board, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;
2. The plan cannot be implemented as approved;
3. A term or condition of approval or of this chapter has been violated; or
4. The tank vessel is no longer in operation.

~~J. Where an operator of a tank vessel has applied for and received from the United States Coast Guard an approval of a Vessel Response Plan (VRP), pursuant to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33-USCS § 2716 (1996), and its implementing regulations found in 33 CFR Part 155 (1997), such VRP shall be sufficient to meet the requirements of § 62.1-44.34:15 of the Code of Virginia and this section while the VRP approval is valid. The operator shall submit to the department an application listing the vessel or vessels for which the approval is sought and a copy of the currently valid VRP approval letter for each tank vessel. The tank vessel operator submitting the application for contingency plan approval in accordance with this subsection shall be the same entity which has applied for and received approval of the VRP from the United States Coast Guard. Each time VRP approval is renewed or reissued, for any reason, for a tank vessel subject to this chapter, the operator shall submit a copy of such renewed or reissued VRP approval letter to the department.~~



~~K.~~J. An application for approval of an oil discharge contingency plan will be accepted only when the fee established by this section has been paid.

1. Fees shall be paid by operators of tank vessels subject to this chapter upon initial submittal of an oil discharge contingency plan to the board. Renewals, additions, deletions or changes to the plan are not subject to the administrative fee. ~~Operators of tank vessels subject to this chapter but meeting the provisions of subsection J of this section shall not be subject to administrative fees for the approval of an oil discharge contingency plan.~~

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to the Treasurer of Virginia. All applications and submissions accompanying fees shall be sent to:

Mailing address:

Virginia Department of Environmental Quality  
Office of Financial Management  
P. O. Box 10150  
Richmond, Virginia 23240

Location address:

Virginia Department of Environmental Quality  
Office of Financial Management  
629 East Main Street  
Richmond, Virginia 23219

3. Application fees for approval of tank vessel contingency plans are as follows:
  - a. For a tank vessel with a maximum storage, handling or transporting capacity of 15,000 gallons and up to and including 250,000 gallons of oil the fee is \$718;
  - b. For a tank vessel with a maximum storage, handling or transporting capacity ~~between~~ greater than 250,000 gallons and up to and including 1,000,000 gallons of oil the fee is \$2,155; and
  - c. For a tank vessel with a maximum storage, handling or transporting capacity greater than ~~one million~~ 1,000,000 gallons of oil the fee is \$3,353.
  
4. The fee for approval of contingency plans encompassing more than one tank vessel, as authorized by 9 VAC 25-101-40.D ~~subsection E~~ of this section, shall be based on the aggregate capacity of the tank vessels.

5. Application fees are refundable upon receipt of a written request for withdrawal of the plan and fee refund no later than 30 days after submittal and prior to approval of the plan.
  
6. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicant's future use under this section.

**9 VAC 25-101-45. Demonstration of financial responsibility.**

The operator of any tank vessel entering upon state waters shall have a Certificate of Financial Responsibility, approved by the United States Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990, or shall deposit with the Board cash or its equivalent in the amount of \$500 per gross ton of such vessel in accordance with 9 VAC 25-101-50.

**9 VAC 25-101-50. Board financial responsibility requirements demonstration.**

***NOTE: This section does not apply to any vessel for which the US Coast Guard has approved a Certificate of Financial Responsibility under § 4204 of the Federal Oil Pollution Act of 1990, 33 USC § 2716. See 9 VAC 25-101-45.***

A. The operator of any tank vessel entering upon state waters shall deposit with the board cash or its equivalent in the amount of \$500 per gross ton of such vessel. If the operator owns or

operates more than one tank vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the vessel having the greatest maximum liability.

1. All documents submitted shall be in English and all monetary terms shall be in United States currency.

2. A copy of the board's acceptance of the required evidence of financial responsibility shall be kept on the tank vessel and readily available for inspection.

B. If the board determines that oil has been discharged in violation of applicable state law or there is a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under such law.

C. Operators of tank vessels may obtain exemption from the cash deposit requirement if evidence of financial responsibility is provided in an amount equal to the cash deposit required for such tank vessel pursuant to § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50.

~~subsection A of this section.~~ The following means of providing such evidence, or any combination thereof, will be acceptable:

1. Self-insurance. Any operator demonstrating financial responsibility by self-insurance shall provide evidence of such self-insurance in a manner that is satisfactory to the board.

An operator demonstrating self-insurance shall:

- a. Maintain, in the United States, working capital and net worth each in the amount required by § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50. ~~subsection A of this section.~~

(1) Maintenance of the required working capital and net worth shall be demonstrated by submitting with the application form an annual, current nonconsolidated balance sheet and an annual, current nonconsolidated statement of income and surplus certified by an independent certified public accountant. Those financial statements shall be for the operator's last fiscal year preceding the date of application and shall be accompanied by an additional statement from the operator's treasurer (or equivalent official) certifying to both the amount of current assets and the amount of total assets included in the accompanying balance sheet which are located in the United States and are acceptable for purposes of this chapter.

(2) If the balance sheet and statement of income and surplus cannot be submitted in nonconsolidated form, consolidated statements may be submitted if accompanied by an additional statement by the involved

certified public accountant certifying to the amount by which the operator's assets, located in the United States and acceptable under 9 VAC 25-101-50, ~~this subsection~~-C, exceed total liabilities and that current assets, located in the United States and acceptable under 9 VAC 25-101-50, ~~this subsection~~C, exceed its current liabilities.

(3) When the operator's demonstrated net worth is not at least 10 times the required amount, an affidavit shall be filed by the operator's treasurer (or equivalent official) covering the first six months of the operator's fiscal year. Such affidavits shall state that neither the working capital nor the net worth have fallen below the required amounts during the first six months.

(4) Additional financial information shall be submitted upon request by the department; or

b. Provide evidence in the form of a marine insurance broker's certificate of insurance, certificate of entry, or other proof satisfactory to the board that the operator has obtained oil pollution liability coverage through an operator's membership in a Protection & Indemnity (P&I) Club that is a member of the international group of P&I clubs or through coverage provided by a pool of marine underwriters in an amount sufficient to meet the requirements of §

62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50, ~~subsection A of this section.~~

2. Insurance. Any operator demonstrating evidence of financial responsibility by insurance shall provide evidence of insurance issued by an insurer licensed, approved, or otherwise authorized to do business in the Commonwealth of Virginia. The amount of insurance shall be sufficient to cover the amount required by § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50, ~~subsection A of this section.~~ The operator shall provide evidence of such coverage in the form of a marine insurance broker's certificate of insurance or by utilizing a form worded identically to the Insurance Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department. The insurer must also comply with all requirements in the form available from the department.

3. Surety. Any operator demonstrating financial responsibility through a surety bond shall file a surety bond utilizing a form worded identically to the surety form available from the department. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and must possess an underwriting limitation at least equal to the amount required by § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50, ~~subsection A of this section.~~ The surety must also comply with all requirements in the Surety Bond Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department.

4. Guaranty. An operator demonstrating financial responsibility through a guaranty shall submit the guaranty worded identically to the form available from the department. The guarantor shall comply with all provisions of 9 VAC 25-101-50, subdivision C, 1 ~~of this section~~ for self-insurance and also comply with all requirements in the Guaranty Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department.

D. To obtain exemption from the cash deposit requirements:

1. The operator shall ~~appoint~~ have and maintain an agent for service of process in the Commonwealth;

2. ~~The~~ Any insurer, guarantor, or surety shall ~~appoint~~ have and maintain an agent for service of process in the Commonwealth;

3. Any insurer must be authorized by the Commonwealth of Virginia to engage in the insurance business; and

4. Any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation by the operator of Article 11 (§ 62.1-33.34:14 et



seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia up to, but not exceeding, the amount insured, guaranteed or otherwise pledged.

5. All forms of evidence of financial responsibility shall be accompanied by an endorsement that certifies that the insurance policy, evidence of self-insurance, surety or guaranty provides liability coverage for the tank vessels in the amount required by § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50. ~~subsection A of this section.~~

6. 9 VAC 25-101-50. ~~Subdivisions D.2, D.3, and D.4 of this section do not apply to operators providing evidence of financial responsibility in accordance with 9 VAC 25-101-50. ~~subdivision C.1 of this section.~~~~

E. Any operator whose financial responsibility is accepted under this chapter shall notify the board at least 30 days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

F. ~~Acceptance~~ The board's approval of evidence of financial responsibility shall expire:

1. One year from the date that the board exempts an operator from the cash deposit requirement based on acceptance of evidence of self-insurance;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

G. 4. All nonexempt tank vessel operators shall file with the board the Application for Approval of Evidence of Tank Vessel Financial Responsibility form which identifies the tank vessel operator and agent for service of process by name and address, provides identifying information on the tank vessel or vessels and certifies to the board that the information is true and accurate for approval of the evidence of financial responsibility. This form is available from the department. This form shall be submitted with the required evidence of financial responsibility (cash deposit, proof of insurance, self-insurance, guaranty or surety), ~~except as permitted in subdivision G 2 of this section~~ and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form. If the operator is a corporation, the application form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the application form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the application form must be signed by a general partner or the sole proprietor.

~~2. A tank vessel operator who seeks approval of the evidence of financial responsibility in accordance with subsection K of this section must complete and sign the application~~

~~required in subdivision G 1 of this section upon the effective date of this chapter or upon expiration of any tank vessel financial responsibility approval previously issued by the department.~~

~~3. A tank vessel operator who seeks renewal of the approval of the evidence of financial responsibility in accordance with subsection K of this section upon expiration of the approval of the evidence of the financial responsibility issued by the department must complete and sign the Annual Certification of Tank Vessel Financial Responsibility form available from the department to renew approval of the evidence of financial responsibility and to certify that there have been no significant changes to the previously submitted application form.~~

~~4. Tank vessel operators may delegate signatory authority to an agent for the annual certification form required in subsection G 3 or submittal of any notifications in accordance with subsection K of this section by completing and signing the Tank Vessel Agent Designation form available from the department. This form identifies the tank vessel operator, the designated agent by name and address, and the respective tank vessel or vessels covered by this designation.~~

H. Application for renewal of approval of tank vessel financial responsibility shall be filed with the board 30 days prior to the date of expiration.

I. All applications and written communications concerning changes, submissions and updates required by this chapter, with the exception of applications and submissions accompanied by fees as addressed in 9 VAC 25-101-50, ~~subsection L K of this section~~, shall be addressed as follows:

Mailing Address:

Virginia Department of Environmental Quality  
Office of Spill Response and Remediation  
P.O. Box 10009  
Richmond, VA 23240

Location Address:

Virginia Department of Environmental Quality  
Office of Spill Response and Remediation  
629 East Main Street  
Richmond, VA 23219

All applications and submissions accompanied by fees as addressed in 9 VAC 25-101-50, ~~subsection L K of this section~~ shall be sent to the address listed in 9 VAC 25-101-50, ~~subdivision L K.2~~.

J. The board, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or
2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility.

~~K. Where an operator of a tank vessel has applied for and received from the United States Coast Guard a Certificate of Financial Responsibility (COFR), pursuant to § 1016 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USCS § 2716 (1996), and its implementing regulations found at 33 CFR Part 138 (1997), such COFR shall be sufficient to meet the requirements of § 62.1-44.34:16 of the Code of Virginia, and this section while such COFR is valid. The operator shall submit to the department an application listing the vessel or vessels for which the approval is sought and a copy of the currently valid COFR for each tank vessel. The tank vessel operator submitting the application for approval of the evidence of financial responsibility in accordance with this subsection shall be the same entity which has applied for and received the COFR from the United States Coast Guard. If an operator has received a Master COFR or a Fleet COFR from the United States Coast Guard, the operator shall submit a listing, including any changes to such listing, of the vessels to which the Master COFR or Fleet COFR applies which are subject to this chapter. Each time a COFR is renewed or reissued for~~

~~any reason for a tank vessel subject to this chapter, the operator shall submit a copy of such renewed or reissued COFR to the department.~~

L.K. An application for approval of the demonstration of financial responsibility will be accepted only when the fees established by this section have been paid.

1. Fees shall only be paid upon initial submittal of the demonstration of financial responsibility by an operator to the board. Renewals or changes are not subject to the administrative fee. ~~Operators of tank vessels subject to this chapter but meeting the provisions of subsection K of this section shall not be subject to administrative fees for the approval of the demonstration of financial responsibility.~~

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to Treasurer of Virginia. All fees and accompanying applications and submissions shall be sent to:

Mailing Address:

Virginia Department of Environmental Quality  
Office of Financial Management  
P.O. Box 10150  
Richmond, VA 23240

Location Address:

Virginia Department of Environmental Quality

Office of Financial Management

629 East Main Street

Richmond, VA 23219

3. Application fees for approval of evidence of financial responsibility for tank vessels are as follows:
  - a. Applicants shall pay an application fee of \$120.
  - b. Applicants shall pay a fee of \$30 for each additional tank vessel requiring a copy of the accepted evidence of financial responsibility.
4. Application fees are refundable upon receipt of a written notice of withdrawal; of the proffer of financial responsibility and a request for refund received by the department no later than 30 days after submittal and prior to approval.
5. Overpayments of application fees are refundable upon written request.  
  
Overpayments not refunded will be credited for the applicant's future use under this section.

**9 VAC 25-101-60. Delegation of authority.**

The ~~executive~~Director of the Department of Environmental Quality, or his designee, may perform any act of the board under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

**9 VAC 25-101-70. Evaluation of the chapter.**

A. The department will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

B. 1. Within three years after the effective date of this chapter, 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 which 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 the current state and federal statutory and regulatory requirements, including identification and justification of the 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 understood by affected entities.

2. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this



chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

### **List of Forms**

Application for Approval of a Tank Vessel Oil Discharge Contingency Plan (ODCP), DEQ101-1 (4/98).

~~Agent Designation Form for Commonwealth of Virginia Tank Vessel Oil Discharge Contingency Plan (ODCP) and Financial Responsibility Requirements, DEQ101-2 (4/98).~~

Insurance Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil Under § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50-A, DEQ101-3 (3/98).

Surety Bond Form Furnished as Evidence of Financial Responsibility of Liability for Discharge of Oil Under § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50-A, DEQ101-4 (3/98).

Guaranty Form Furnished as Evidence of Financial Responsibility of Liability for Discharge of Oil Under § 62.1-44.34:16 of the Code of Virginia and 9 VAC 25-101-50-A, DEQ101-5 (3/98).

Application for Approval of Evidence of Tank Vessel Financial Responsibility (TVFR), DEQ101-6 (4/98).

~~Annual Certification of Evidence of Tank Vessel Financial Responsibility, DEQ101-7 (4/98).~~

Certified True and Accurate: \_\_\_\_\_

Robert G. Burnley, Director, DEQ

Date: \_\_\_\_\_