Economic Impact Analysis
Virginia Department of Planning and Budget

9 VAC 25-640 – Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements
Department of Environment Quality
February 20, 2007

Summary of the Proposed Regulation

The State Water Control Board (Board) proposes to amend the existing regulations on Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9 VAC 25-640). The major proposed change is to eliminate the standby trust requirement for operators who demonstrate financial responsibility through a guarantee, a surety bond or a letter of credit. Under certain conditions, all amounts paid by the guarantor, surety, or institution issuing a letter of credit shall be deposited into the Virginia Petroleum Storage Tank Fund (VPSTF) and will be used by the Board to conduct containment and cleanup. The Board also proposes several changes to the regulation for the purpose of clarification.

Results of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Under the current Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9 VAC 25-640), operators of petroleum aboveground storage tank (AST) facilities[1] and pipeline facilities shall demonstrate financial responsibility to ensure that the costs of containment and cleanup will be recovered in the event of accidental releases arising from the operation of petroleum ASTs and pipeline facilities. Subject to certain limitations, an operator may use any one or combination of the following mechanisms to demonstrate financial

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[1] Unless otherwise exempted in 9 VAC25-640-30, provisions in 9 VAC25-640-220 apply to operators of all aboveground storage tank facilities, the rest of 9 VAC 25-640 apply to operators of aboveground storage tank facilities with a maximum storage capacity of 25,000 gallons or greater of oil and pipeline facilities.

responsibility for one or more aboveground storage tanks or pipelines: 1) financial test of self-insurance, 2) guarantee, 3) insurance and group self-insurance pool coverage, 4) surety bond, 5) letter of credit, and 6) trust fund. Current regulations require that an operator who uses any one of the mechanisms among guarantee, surety bond and letter of credit establish a standby trust fund when the mechanism is acquired. In the event of a release, all amounts paid by the guarantor, surety or issuing institution will be deposited directly into the standby trust fund and will be used for containment and cleanup arising from the release.

The Board proposes to eliminate the standby trust requirement if an operator uses guarantee, surety bond or letter of credit to demonstrate financial assurance. In the event that an operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of the guarantee, surety bond or letter of credit, and the Board determines or suspects that a discharge has occurred at an AST and/or pipeline covered by the mechanism, all amounts paid by the guarantor, surety, or institution issuing a letter of credit shall be deposited into the Virginia Petroleum Storage Tank Fund and will be used by the Board to conduct containment and cleanup. Change of the receiving fund from the standby trust fund to VPSTF for money paid by guarantor, surety, or institution issuing a letter of credit will not affect the stringency of the current financial responsibility requirements. On the other hand, elimination of the standby trust fund requirement will reduce the cost of compliance for operators using guarantee, surety bond or letter of credit as financial assurance mechanisms. According to the Department of Environmental Quality (DEQ), obtaining a standby trust fund will cost an operator $1,250 on average. Therefore, this proposed change will create a cost saving of $1,250 on average for operators that are currently using guarantee, surety bond or letter of credit as financial assurance mechanisms. DEQ reports that currently there are 750 AST facilities in the Commonwealth of Virginia. Among the 155 facilities that have had their financial responsibility reviewed by DEQ by February 2007, about 29.7% are using guarantee, surety bond or letter of credit to demonstrate financial assurance. Assuming that the percentage of facilities using guarantee, surety bond or letter of credit remains 29.7% among all of the AST facilities, approximately 223 AST facilities are currently using guarantee, surety bond or letter of credit and will incur a cost saving of $1,250 after the standby trust requirement is eliminated. The total cost savings from eliminating the standby trust requirement will be approximately $278,750 statewide.

The elimination of the standby trust requirement will make the use of guarantee, surety bond or letter of credit as financial assurance mechanisms less costly than it is now, and will likely encourage some operators that currently use other mechanisms to switch to guarantee, surety bond or letter of credit. Increased use of guarantee, surety bond, or letter of credit as financial assurance mechanisms will benefit the public with an increased level of protection because these mechanisms are backed by a third party such as a bank or surety company, and will more likely ensure that the funds will be available for containment and cleanup compared to mechanisms relying on the operators' net worth. The estimated number of operators that will switch to guarantee, surety bond or letter of credit is not known. However, the change in the percentages of Underground Storage Tank (UST) facilities using guarantee, surety bond or letter of credit as financial assurance mechanisms before and after the standby trust requirement was eliminated from the Petroleum Underground Storage Tank Financial Responsibility Requirements (9 VAC 25-590) may shed some light on the impact of the proposed change. DEQ reports that about 9.9% of operators of UST facilities used guarantee, surety bond or letter of credit as financial assurance mechanisms in 2003. After the standby trust requirement was eliminated from the Petroleum Underground Storage Tank Financial Responsibility Requirements (9 VAC 25-590) effective January 2005, the percentage of the UST operators using guarantee, surety bond or letter of credit to demonstrate financial assurance increased to 19.8% in May 2005 and 31.4% in February 2007.

The Board also proposes several changes for clarification that do not affect the regulatory requirements. For example, the proposed regulation will replace "owner" with "operator" to be consistent with the Code of Virginia and other sections of the regulation. The name of "Rural Electrification Administration" will be replaced with "Rural Utilities Office" due to change of agency name. These proposed changes will reduce possible confusion and benefit the public and the operators of AST and pipeline facilities.

Businesses and Entities Affected

The proposed regulation affects all of the 750 AST and pipeline facilities in Virginia. Among them, approximately 223 that are currently using guarantee, surety bond or letter of credit will incur a cost saving of $ 1,250 annually. The other 527 facilities may be encouraged to switch from other mechanisms to guarantee, surety bond or letter of credit. Financial institutions that provide guarantee, surety bond or letter of credit will likely foresee reduced business in standby trust funds and possibly increased business in guarantees, surety bonds or letters of credit.

Localities Particularly Affected

The proposed regulations will affect all localities in the Commonwealth.

Projected Impact on Employment

The proposed elimination of the standby trust requirement will create cost savings for AST and pipeline facilities that are currently using guarantee, surety bond or letter of credit to demonstrate financial assurance. This would increase their profits and may have a slight positive impact on the number of people employed by those facilities.

Effects on the Use and Value of Private Property

The proposed elimination of the standby trust requirement will create cost savings for AST and pipeline facilities that currently use guarantee, surety bond or letter of credit as financial assurance mechanisms. This would increase their profits and will likely have a positive impact on their asset value.

Small Businesses: Costs and Other Effects

Operators of small AST and pipeline facilities that are currently using guarantee, surety bond or letter of credit would incur a cost saving of $ 1,250 annually. Small facilities that use mechanisms other than guarantee, surety bond or letter of credit may find it worthwhile to switch to guarantee, surety bond or letter of credit due to the reduced cost.

Small Businesses: Alternative Method that Minimizes Adverse Impact

Small businesses will benefit from the proposed regulations.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB’s best estimate of these economic impacts.