



Virginia  
Regulatory  
Town Hall

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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| <b>Agency name</b>                                 | State Water Control Board   |
| <b>Virginia Administrative Code (VAC) citation</b> | 9 VAC 25-580  |
| <b>Regulation title</b>                            | Underground Storage Tanks: Technical Standards and Corrective Action Requirements |
| <b>Action title</b>                                | Amendment for Implementation of the federal Energy Policy Act of 2005             |
| <b>Date this document prepared</b>                 | March 2007  |

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*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

Pursuant to the requirements of the federal Energy Policy Act of 2005, the Board intends to amend the regulation to require secondary containment of all new and replacement USTs and associated piping within 1000 feet of an existing community water system (this includes the piping distribution system) or other potable drinking water well. The regulation will also be amended to develop criteria for determining what tanks are ineligible for petroleum delivery, the methods for marking the tanks and providing notice to owners/operators and delivery companies that the tanks are ineligible and for developing criteria for reclassifying ineligible tanks as eligible. The goal of the amendment is to reduce the number and severity of petroleum leaks from UST systems by strengthening pollution prevention requirements and encouraging UST owners and operators to maintain compliant UST systems.

To see the full text of this new federal legislation see: [http://www.epa.gov/oust/fedlaws/nrg05\\_01.htm](http://www.epa.gov/oust/fedlaws/nrg05_01.htm)

### 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 number(s), 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.*

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The legal basis for the Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9 VAC 25-580) is the State Water Control Law (Chapter 3.1, Article 9 of the Code of Virginia). Specifically, § 62.1-44.34:9:8 authorizes the Board to promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations. Section § 62.1-44.34:9.5 authorizes the Board to apply for such funds as may become available under federal acts and transmit such funds to appropriate persons.

**Need**

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

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Secondary containment for new and replaced USTs within 1000 feet of a public water supply or potable well will help prevent future UST leaks and limit the extent and impact of contamination. A delivery prohibition program will provide added incentive for UST owner/operators to maintain compliant tank systems. Compliant tank systems reduce the likelihood and severity of petroleum leaks into the environment.

**Substance**

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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9 VAC 25-580-10 (Definitions): The Board intends to amend section 9 VAC 25-590-10 to add new definitions that will apply to the new secondary containment and delivery prohibition requirements.

9 VAC 25-580-50 (Performance standards for new UST systems) and 9 VAC 25-580-140 (Requirements for petroleum UST systems): The Board intends to amend section 9 VAC 25-580-50 and 9 VAC 25-580-140 to require secondary containment for all new tanks and piping within 1000 feet of existing community water systems or other potable drinking water wells.

9 VAC 25-580-370 (Delivery Prohibition): The regulation will also be amended to add section 25-580-370 prohibiting delivery of petroleum products to tanks deemed ineligible by the Board. This new section of the regulation will contain criteria for determining what tanks are ineligible for petroleum delivery, the process for identifying a tank as ineligible, the methods for marking the tanks and providing notice to owners/operators and delivery companies that the tanks are ineligible and the criteria for reclassifying ineligible tanks as eligible. The new section will also provide a process for determining which geographic areas are subject to the rural and remote areas consideration.

Other sections of the regulation may need to be changed to accommodate the addition of the secondary containment and delivery prohibition requirements.

The Board intends to use the US Environmental Protection Agency's (EPA) grant guidelines for secondary and containment and delivery prohibition when developing the amendments.

## Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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One alternative is to keep the current regulations as they are; however, the federal Energy Policy Act requires states to incorporate new federal mandates as a condition to receiving federal grant funds. If the Board does not amend the UST regulation to incorporate these new federal requirements, existing levels of federal grant funding (~\$1.7million per year) will be in jeopardy.

The federal Energy Policy Act of 2005 requires states to promulgate regulations to (1) require UST owners and operators to provide secondary containment for new and replacement USTs and piping if the system is within 1,000 feet of any existing community water system or any existing potable drinking water well; or (2) require tank manufacturers and installers to maintain evidence of financial responsibility for releases associated with improper installation or manufacture of tanks. The Energy Act mandates that states choose between requiring secondary containment and requiring tank manufacturers and installer financial responsibility. Therefore, an alternative to consider as part of this regulatory action is to require tank manufacturers and installers to maintain financial responsibility rather than requiring secondary containment.

The Board is considering secondary containment because it is the most environmentally protective alternative and preliminary research indicates that the majority of new tanks and piping installed today are secondarily contained. Further, establishing a program for manufacturer and installer financial responsibility may result in an additional burden on the Virginia Petroleum Storage Tank Fund. The Fund currently acts as a financial responsibility mechanism for tank owners and operators in addition to funding petroleum cleanups. Requiring this additional financial responsibility could mean the Fund will be called upon to act as an additional financial responsibility mechanism for manufacturers and installers, as well, potentially resulting in less funds available for petroleum cleanups.

If other alternatives to the intended elements of the amendment are identified during the participatory process, they will be considered and developed as appropriate. The process will involve the use of an advisory committee that will include members of the regulated community and the public in an effort to elicit cost effective ideas for developing the necessary provisions.

## 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 hearing is to be held to receive comments on this notice.*

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The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) impacts of the regulation on human health and the environment. The Board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other

administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public meeting or by mail, email or fax to Russell P. Ellison III, VA-DEQ, P.O. Box 1105, Richmond, VA 23218; phone (804) 698-4269; fax (804) 698-4266; email rpellison@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5:00 p.m. on the date established as 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. Both oral and written comments may be submitted at that time.

**Participatory approach**

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved 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 is using the participatory approach to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.

**Family impact**

*Assess the potential 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 only impact on the family or family stability is indirect. Those families living near UST systems-- especially those using private potable water supply wells will benefit from the reduced risk of well contamination due to releases from noncompliant UST systems.