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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-580
Regulation title	Underground Storage Tanks: Technical Standards and Corrective Action Requirements
Action title	Amendment Regarding Operator Training for Owners and Operators
Date this document prepared	December 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 operator training for all owners and operators of underground storage tanks. Section 1524 of the Energy Policy Act amends Subtitle I of the Solid Waste Disposal Act by adding Section 9010. Section 9010 requires EPA to publish guidelines that specify training requirements for three classes of operators: persons having primary responsibility for on-site operation and maintenance of underground storage tank systems; persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems; and, daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system. 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.

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.

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.

An operator training program will educate UST operators about how to maintain compliant tank systems and how to recognize and respond to problems associated with leaking USTs. Operator familiarity with UST regulatory requirements and with their own UST systems will increase compliance, help prevent future UST releases and limit the extent and impact of contamination in the event of a release.

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.

Enter statement here 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 operator training requirements.

9 VAC 25-580-50 (Performance standards for new UST systems): The Board intends to amend section 9 VAC 25-580-50 or create another section to require operator training for all classes of UST operators as outlined in the grant guidelines.

Other sections of the regulation may need to be changed to accommodate the addition of the operator training requirements.

The Board intends to use the US Environmental Protection Agency's (EPA) grant guidelines for operator training when developing the amendments at:

http://www.epa.gov/swerust1/fedlaws/otgg_final080807.pdf.

Additional minor clarification changes may also be required.

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.

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 this new federal requirement, 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 require UST operator training.

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.

The agency 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, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. The agency 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 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@deg.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.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 last day of the public comment period.

A public meeting will be held and notice of the meeting may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov). 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.