



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

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC25-91
<b>Regulation title</b>	Facility and Aboveground Storage Tank (AST) Regulation
<b>Action title</b>	Amend to incorporate requirements of Chapter 884 of the 2011 Acts of Assembly and clarify existing regulatory language.
<b>Date this document prepared</b>	August 31, 2011

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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.*

This regulation contains requirements that Aboveground Storage Tanks (AST) in Virginia must meet. These regulations are necessary to prevent pollution of state waters, lands, and storm drain systems from the discharge of oil from new and existing aboveground storage tanks (AST). The regulations include: (i) registration requirements for registration of facilities and individual petroleum Aboveground Storage Tanks located within the Commonwealth; (ii) standards and procedures to prevent pollution from new and existing ASTs; and (iii) requirements for the development of facility oil discharge contingency plans for facilities with an aggregate capacity of 25,000 gallons or greater of oil.

The goals of this amendment are to improve the clarity of the regulation, make the requirements more easily understandable by the individuals and entities affected, and to bring applicable portions of the regulation into conformity with related laws, federal regulations, and current industry standards. This regulatory action will include revisions that address performance standards for certain aboveground storage tanks that are required by Chapter 884 of the 2011 Acts of Assembly.

### 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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Section 62.1-44.34:15.1 of the Code of Virginia directs the State Water Control Board to adopt regulations concerning aboveground storage tanks. The statute specifically directs the board to adopt regulations with different regulatory requirements based on the aggregate capacity of the tanks.

Section 62.1-44.34:19.1 of the Code of Virginia requires Board to develop an inventory of facilities with an aboveground storage capacity of more than 1320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil. The Board is authorized by statute to develop regulations concerning the registration of these tanks.

Section 62.1-44.34:15 of the Code of Virginia requires facilities to provide an Oil Discharge Contingency Plan to the Department for approval. These plans detail actions that will be taken by the operator in the event an oil spill occurs.

There is no direct mandate for aboveground storage tank regulations in federal law; however, federal regulations (such as 40 CFR Part 112 (Oil Pollution Prevention), and 29 CFR 1910.106 (Occupational Safety and Health Regulations) and industry standards (such as API 653 and API 570) contain a number of requirements related to AST construction and operation. Many of those federal requirements are similar in their purpose/effect to the requirements envisioned by the State's Pollution Prevention Law and Oil Discharge Contingency Plan mandates. Every attempt has been made to make the requirements of the State's aboveground storage tank regulations consistent with requirements already contained in those federal regulations and industry standards.

**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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The regulations need to be revised to incorporate new performance standards for certain aboveground storage tanks as mandated by actions taken by the 2011 General Assembly. The new performance standards will further protect the safety and welfare of citizens. Other changes will align Virginia's regulatory requirements with federal requirements and current industry standards.

**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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The regulations will be revised to incorporate new performance standards for certain aboveground storage tanks. These new standards will be required to be instituted for aboveground storage tanks at facilities with an aggregate capacity of 1,000,000 gallons or more of oil storage in existence prior to

January 29, 1992, located in the City of Fairfax. These requirements must be implemented by facilities prior to July 1, 2021.

The regulations will also be reviewed in the following areas:

- definitions;
- exclusions;
- Fees for AST registration;
- revised DEQ addresses for submissions to DEQ;
- pollution prevention requirements;
- inspections;
- variances; and
- list of referenced publications.

During the review process, areas other than the ones listed above, may be identified as needing to be revised.

## 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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The regulation needs to be revised to comply with state statute. The board is required to adopt regulations containing performance standards for certain aboveground storage tank facilities with an aggregate capacity of one million gallons or more. These performance standards must be met by July 1, 2021. Delaying inclusion of these standards into the regulation will cause a delay in facilities taking steps to implement these standards, and may cause them to be in violation of state law. While developing the performance standards, the agency will consider alternatives that are protective of human health and the environment that may be less burdensome to the regulated community.

## 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 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 Ms. Melissa Porterfield, P.O. Box 1105, Richmond, VA 23218, telephone (804) 694-4238, FAX (804) 698-4346 or email [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.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](http://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 DEQ by the close of the public comment period.

A NOIRA public meeting will be held and notice of the meeting may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)). Both oral and written comments may be submitted at that time.

### Public Hearing at Proposed Stage

A public hearing will be held after publication of the proposed stage of the regulatory action.

### Regulatory Panel

*Please indicate, to the extent known, if advisers (e.g., regulatory advisory panel or negotiated rulemaking panel) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using a panel in the development of the proposal; 2) the agency is using a panel in the development of the proposal; or 3) the agency is inviting comment on whether to use a panel to assist the agency in the development of a proposal.*

The Board is using a regulatory advisory panel to develop a proposal. In August 2011, a notice was published requesting volunteers to participate on the panel for this regulation. A panel has been established for this regulation and will begin meeting during the fall of 2011. Information about meetings can be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)).

### 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.*

This regulation does not have a direct impact on the institution of the family and family stability.

### Small business impact review

*Pursuant to § 2.2-4007.1 E and F each existing regulation shall be reviewed **at least once every five years** to ensure that it minimizes the economic impact on small businesses.*

*If this NOIRA will include a review of the entire regulation for small business impact, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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The agency will review the entire regulation for consistency with the requirements of state law. During the review the agency will consider: the continued need for the regulation; areas in which the regulation may be streamlined or simplified; areas which duplicate or conflict with other state and federal laws or regulations; and changes to technology, economic conditions, or other factors that have changed since the regulation was last amended. The agency will consider ways to minimize the economic impact of regulations on small businesses that meet the requirements of state law and that are protective of human health and the environment.