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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is" Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-640
Regulation title	Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements
Date	June 21, 2017

This information is required pursuant to Executive Order 17 (2014) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

The legal basis for the regulations for Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640), is the State Water Control Law (Chapter 3.1, Title 62.1, Section 44.34, Articles 10 and 11 of the Code of Virginia). Specifically, §62.1-44.34:16D authorizes the State Water Control Board to promulgate regulations requiring operators of facilities to demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth and operators of pipelines to demonstrate financial responsibility for any pipelines operated within the Commonwealth. The State Water Control Board previously adopted the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements to specify the criteria by which operators of aboveground storage tank (AST) and pipeline facilities can demonstrate adequate financial resources for the containment and cleanup of any oil discharge which may occur at their facilities.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

This regulation details the amount of financial assurance that must be provided for aboveground storage tanks and pipeline facilities as well as the financial mechanisms the regulated community may use to demonstrate financial assurance. This regulation is closely related to another board regulation- the Facility and Aboveground Storage Tank Regulation (9VAC25-91) which contains the technical standards for aboveground storage tanks. One alternative considered was to combine these regulations into a single regulation. This option was rejected since it would not result in any additional protections to human health and the environment or remove any regulatory burdens from the regulated community.

Another alternative considered was repealing the regulation. This alternative was not considered viable since § 62.1-44.34:16 D. of the Code of Virginia requires operators of facilities to demonstrate financial responsibility based on the total storage capacity of all facilities operated within Virginia. This section of the Code of Virginia also provides the Board the authority to adopt regulations requiring operators of facilities to demonstrate financial responsibility. Without this regulation, there would be uncertainty concerning the requirements the Board expects the regulated community to comply with. This regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comments were received during the public comment period. An informal advisory group was not formed to assist with this periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation is clearly written and easily understandable. This regulation details the amount of financial assurance that must be provided for aboveground storage tanks and pipeline facilities as well as the financial mechanisms the regulated community may use to demonstrate financial assurance. The regulation is necessary for the protection of public health, safety and welfare by requiring operators of regulated petroleum ASTs and pipeline facilities to demonstrate they have the financial resources available to pay for the costs of containment and cleanup necessitated by accidental releases arising from the operation of petroleum ASTs and pipeline facilities.

Result

Please state that the agency is recommending that the regulation should stay in effect without change and provide the reason why.

The agency recommends retaining this regulation. During this review, § 30 was identified as needing to be revised to be consistent with the exclusions found in the Facility and Aboveground Storage Tank (AST) Regulations (9VAC25-91). Additionally, Section 250 was identified as obsolete and no longer needed.

This regulation will be updated in the future as part of a separate regulatory action to make the language concerning exclusions from the regulation consistent with the language in the companion regulation Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91).

Small business impact

In order to minimize the economic impact of regulations on small business, 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 nature of complaints or comments received concerning the regulation from the public; 3) the complexity of the regulation; 4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and 5) 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 basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

The current regulation continues to be needed. The regulation is structured to minimize the impact on the regulated community, including those that are small businesses, while protecting human health and the environment. The regulation requires financial assurance to be provided based on the amount of petroleum that is being stored. Multiple different types of financial mechanisms have been included in the regulation to provide the regulated community with flexibility concerning how they demonstrate financial assurance. The wordings of the financial mechanisms are included in the regulation and are to be used by the regulated community. This assists with reducing the regulatory burden on the regulated community.

This regulation does not duplicate or conflict with federal or state law. The Facility and Aboveground Storage Tank Regulation 9VAC25-91 is a companion regulation to this regulation. The Facility and Aboveground Storage Tank (AST) Regulation contains the technical standards for aboveground storage tanks while this regulation address the financial assurance requirements for aboveground storage tanks and pipeline facilities.

No comments were received during the public comment period.

The regulation was last amended in 2013 to include an additional financial mechanism in the regulation. The financial assurance mechanisms included in the regulation continue to be available to the regulated community from financial institutions.

The agency recommends retaining this regulation with minor changes that will be made as part of a separate regulatory action. During this review, § 30 was identified as needing to be revised to be consistent with the exclusions found in the Facility and Aboveground Storage Tank (AST) Regulations

(9VAC25-91). Additionally, Section 250 was identified as obsolete and no longer needed. These changes will not impact small businesses.

The regulation continues to meet the objective of protecting the public from expenses related to containment and cleanup necessitated by accidental releases arising from the operation of petroleum ASTs and pipeline facilities. All owners including small business owners are allowed to select from multiple financial assurance mechanisms to demonstrate financial assurance. This provides the regulated community with flexibility concerning compliance with the financial assurance requirements.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on families.