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Periodic Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-590
Regulation title	Petroleum Underground Storage Tank Financial Responsibility Requirements
Date this document prepared	March 26, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Acronyms and Definitions

Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

CFR- Code of Federal Regulation
UST- Underground storage tank

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

The legal basis for the regulations for Petroleum Underground Storage Tank Financial Responsibility Requirements, 9 VAC 25-590, is the State Water Control Law (Title 62.1, Chapter 3.1, Articles 9 and 10 of the Code of Virginia). Specifically, § 62.1-44.34:9(8) authorizes the State Water Control Board to promulgate such regulations as may be necessary to carry out its powers and duties with regard to USTs in accordance with federal laws and regulations. Further, § 62.1-44.34:12(A) of the State Water Control Law provides the direct authority to the State Water Control Board to promulgate regulations that conform to the federal UST financial responsibility requirements of 42 U.S.C § 6991b (d) and any regulations adopted thereunder. Federal regulations (40CFR280) contain requirements for USTs.

Alternatives

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

This regulation addresses requirements for owners and operators to provide financial assurance. Virginia's program differs from the federal program. Virginia's program provides assistance to owners and operators of USTs with demonstrating financial assurance. One option would be to revise the regulation to more closely mirror federal financial assurance requirements, and remove the ability of owners and operators to utilize the Virginia Petroleum Storage Tank Fund. This option was rejected since it would be more burdensome of owners and operators and would also conflict with the state statute concerning the establishment of the Virginia Petroleum Storage Tank fund and the purpose of the fund.

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. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

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

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation is necessary to protect public health, safety, and welfare. This regulation contains methods owners and operators may utilize to demonstrate financial assurance and includes the use of the Virginia Petroleum Storage Tank Fund. The regulation is clearly written and easily understandable.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The regulation continues to be needed and is being retained without changes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include 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, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

The regulation continues to be needed to protect the human health and the environment.

No comments were received during the public comment period for the periodic review.

The regulation is complex and technical in nature due to the fact the regulation addresses financial assurance requirements for USTs and the various mechanisms that may be used to demonstrate financial assurance. Virginia's regulation is similar to the federal regulation concerning the financial assurance mechanisms available to owners and operators; however, the state regulation provides an additional financial assurance mechanism not mentioned in the federal regulation and allows owners and operators the ability to use the Virginia Petroleum Storage Tank Fund to assist owners and operators with demonstrating financial assurance.

This regulation was last amended in 2018 to maintain consistency with 40CFR280. The regulation is consistent with current federal requirements applicable to USTs.

The regulation, as currently written, minimizes the impact on small businesses and Virginia's regulation is less obtrusive on small governments than the applicable federal regulation.