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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-640
VAC Chapter title(s)	Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements
Date this document prepared	October 29, 2021

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 (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

AST- Aboveground Storage Tanks

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

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 to Regulation

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 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. One 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

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

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

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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 for the protection of public health, safety and welfare. The regulation requires 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. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency is recommending the regulation stay in effect without change.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will 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 2021 to update an agency name and Code of Virginia citations. The financial assurance mechanisms included in the regulation continue to be available to the regulated community from financial institutions.

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 assess the potential impact of the regulation's impact on the institution of the family and family stability.

This regulation does not have a direct impact on the family or family stability.