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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9 VAC25-640
<b>Regulation title(s)</b>	Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements
<b>Action title</b>	Revisions needed to be consistent with changes made to Facility and Aboveground Storage Tank (AST) Regulation 9VAC25-91 and other editorial changes
<b>Date this document prepared</b>	February 22, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements specify the criteria by which operators of aboveground storage tanks containing oil and oil pipeline facilities can demonstrate adequate financial resources for the containment and cleanup of any oil discharge which may occur at their facilities. Amendments are being made to this regulation as a result of changes made to a companion regulation, the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). The Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements regulation (9VAC25-640) specifies the financial assurance requirements for pipeline facilities and aboveground

storage tanks regulated by the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). The Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91) contain the technical requirements for registration of facilities and individual ASTs, as well as the standards and procedures for operators of certain facilities relating to pollution prevention, and oil discharge contingency plans.

Section 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91) excludes certain activities from regulation. Exclusions from regulation are also listed in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640). This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91).

An obsolete section is also being deleted from the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements regulation. Regulations are periodically reviewed as required by Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, and the obsolete section is no longer needed or applicable.

### Acronyms and definitions

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

AST- Aboveground Storage Tank

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

At its meeting on April 12, 2018, the State Water Control Board authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization also constituted its amendment of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a*

*specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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The legal basis for the 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, §62.1-44.34:16 D 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.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). This will remove confusion concerning activities excluded from regulation.

An obsolete section (§250) is also being deleted from the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements regulation. Regulations are periodically reviewed as required by Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia and the regulatory language is no longer needed or applicable.

### Rationale for using fast-track process

*Please explain the rationale for using the fast-track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

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The proposed amendments are expected to be non-controversial, and therefore justify using the fast-track process. This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91).

As part of this amendment an obsolete section (§250) is also being deleted from the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements regulation. Regulations are periodically reviewed as required by Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia and the regulatory language is no longer needed or applicable.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of changes" section below.*

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This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). This will remove confusion concerning activities excluded from regulation.

An obsolete section (§250) is also being deleted from the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements regulation. Regulations are periodically reviewed as required by Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia and the regulatory language is no longer needed or applicable.

### Issues

*Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

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The public, regulated community and agency will all benefit from these changes. The amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). There are no disadvantages to the public, regulated community or agency.

### Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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The amendment does not include any requirements more restrictive than applicable federal requirements.

### Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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The impact of this regulation is statewide; therefore, the Department anticipates that all localities will be equally affected.

## Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

§62.1-44.34:16 D 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 Board previously adopted this regulation as authorized by state law. The amendment revises the exclusions listed in this regulation to be consistent with the exclusions listed in the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91).

Facilities are required to demonstrate financial responsibility based on the total storage capacity of all facilities operated within the Commonwealth and operators of pipelines demonstrate financial responsibility for oil pipelines operated within the Commonwealth. Regulatory flexibility has previously been included in the regulation concerning the demonstration of financial assurance and this flexibility has been provided to all facilities. The adoption of less stringent standards for small businesses would not be protective of human health and the environment.

The amendments to the regulation do not place any additional regulatory burdens on the regulated community including those that may be small businesses.

## Public participation

*Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.*

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, 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 for the public comment file may do so by mail, email or fax to Melissa Porterfield, Office of Regulatory Affairs, P.O. BOX 1105, Richmond, VA 23218, phone: 804-698-4238, FAX: 804-698-4019, 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 11:59 pm on the last day of the public comment period.

### Public participation notice

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the agency shall: 1) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). There is no increase in costs associated with implementing and enforcing this regulation.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). There is no increase in costs to localities.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). There is no increase in costs to individuals, businesses, or other entities.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that:  a) is independently owned and operated and;  b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>At the end of FY2017, there were 10,972 active registered ASTs in Virginia. These ASTs were located at 4,003 facilities within the state. It is difficult to identify which of these facilities meet the definition of a small business entity. There were 2,030 facilities that only have one AST registered, and it is assumed that most small businesses will only have one registered AST.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all</b></p>	<p>This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the</p>



<p><b>costs including:</b>  <b>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and</b>  <b>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). There is no increase in costs associated with this regulatory amendment.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). The revisions will remove confusion concerning activities excluded from regulation.</p>

### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

One alternative considered was retaining the regulation as is. This alternative was rejected since retaining the regulation as is would potentially lead to confusion concerning entities exempted from the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements. This amendment modifies the language in § 30 of the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9VAC25-640) to include the revisions made to the exclusions in § 30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). This amendment removes confusion concerning activities excluded from regulation.

This regulation includes multiple options for demonstrating financial assurance which benefits the regulated community, including small businesses. The changes to the regulation do not impact the financial assurance mechanisms that may be used or change the amount of financial assurance required. The amount of financial assurance required to be provided is based on the storage capacity of the aboveground storage tank, and typically small businesses have smaller aboveground storage tanks than larger businesses.

### Family impact

*Please assess the impact of this 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 regulatory action will not have an impact on the institution of the family and family stability.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
30		Exclusions	Revisions made to the exclusions found in §30 of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91) are being added to this section. Examples have been added to 2. “(e.g. airport refueling trucks and mobile refueling vehicles).” An additional exclusion has been added as 15. “An AST that forms an integral part (cannot be readily detached or removed) of the equipment or machinery and the contents of the AST are solely used by the attached equipment or machinery (e.g., fuel tank affixed into the frame of an emergency generator);” As a result subdivisions have been renumbered within this section.
250		Evaluation of chapter	This section is being repealed. Regulations are periodically reviewed as required by Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia and the regulatory language is no longer needed or applicable.