



Virginia
Regulatory
Town Hall

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Fast Track Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9VAC25-101
Regulation title	Tank Vessel Discharge Contingency Plan and Financial Responsibility Regulation
Action title	Amendment to update regulation to conform to statutory requirements, clarify requirements and remove a section that is no longer needed.
Date this document prepared	February 4, 2014

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*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

This regulation establishes requirements tank vessels must meet in order to transport oil on state waters. It requires a plan to be developed to address any spill that may occur and establishes financial assurance requirements that vessels must meet to demonstrate that they will be able to fund clean-up of any spill that may occur. This regulatory amendment is needed to update the regulation with state statute, to add clarity to the applicability of the regulation, to correct a statutory citation and to remove an obsolete section.

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 March 28, 2014, 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 adoption 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. The identification should include a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary

Section 62.1-44.15 of the Code of Virginia requires operators of tank vessels that are transporting or transferring oil as cargo upon state waters to develop contingency plans. Section 62.1-44.16 of the Code of Virginia requires financial responsibility to be provided by an operator of a tank vessel demonstrating the owner's financial stability to conduct a proper response to a discharge of oil. These requirements are applicable to tank vessels that have a maximum storage, handling or transporting capacity of 15,000 gallons or more. The State Water Control Board previously adopted this regulation to implement these statutory requirements.

The federal Oil Pollution Act of 1990 also places requirements on vessels that are over 300 gross tons that transport oil. The Oil Pollution Act of 1990 requires vessels to have vessel response plans and to obtain a Certificate of Financial Responsibility from the U.S. Coast Guard. Virginia's statute recognizes the requirements of the Oil Pollution Control Act of 1990 and deems vessels in compliance with Virginia requirements if they have a vessel response plan approved by the U.S. Coast Guard and/or a Certificate of Financial Responsibility, as applicable.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail 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.

This regulatory amendment is needed to update the regulation with statute, to add clarity to the regulation, and to remove an obsolete section. This regulation establishes requirements for spill response plans to be developed and requires vessels to provide financial assurance. These requirements are essential to protecting the health, safety, and welfare of citizens by requiring vessels to develop plans to address spills before they occur and to be financially able to take action to remediate

any spills that occur. This promotes a faster response to clean-up any spills that may occur, minimizing the potential impacts on the environment.

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?

Please note: If either an objection to the use of the fast-track process is received within the 30-day public comment period 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; or the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the Department shall (i) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The changes to this regulation are minor changes to conform to state statute, clarify a regulatory requirement, correct a statutory citation, and remove an outdated regulatory review procedure. These changes are expected to be noncontroversial since they do not place any additional regulatory requirements on the regulated community.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. Note, more detail about all provisions or changes is provided in the "Detail of changes" section.

The changes to the regulation are minor and are not substantive and are as follows:

- The ability of the Water Board to revoke the approval of an Oil Discharge Contingency Plan (ODCP) if a vessel is no longer operating is being removed since it is not listed as a reason the State Water Control Board may revoke an ODCP.
- The regulation is also being revised to clarify that if a vessel's financial assurance has been approved by the Coast Guard, no financial assurance is required to be provided to Virginia.
- An incorrect citation is being corrected.
- The regulation is being modified to remove the obsolete section that requires the regulation to be reviewed every three years. Regulations are now reviewed as required by the Governor's executive order that is in place as well as the Administrative Process Act.

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.

There are no disadvantages to the public or the Commonwealth.

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.

Due to differences in the applicability criteria in federal and state statute, there are a small number of tank vessels that are not subject to the U. S. Coast Guard requirements but are required to have Board approval. The Oil Pollution Act of 1990 regulates vessels that are greater than 300 gross tons. State statute regulates tank vessels that have a maximum storage, handling or transporting capacity of 15,000 gallons or more. Both of these thresholds are established in either federal or state statute. Virginia statute contains provisions to regulate smaller tank vessels that are able to navigate state waters. Regulating smaller tank vessels (those between 15,000 gallons and 300 gross tons) is needed to protect Virginia waterways in the event of an oil spill.

One change being proposed to the regulation is to clarify that if financial assurance for a vessel has been approved by the Coast Guard, financial assurance is not required to be provided to Virginia.

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.

The regulation is a statewide regulation, and all localities with state waters are impacted by the regulation.

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 Ms. Melissa Porterfield, P.O. Box 1105, Richmond, VA 23218, telephone (804) 694-4238, FAX (804)

698-4319 or email melissa.porterfield@deg.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. 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.

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>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>The changes to the regulation are minor and the state will not incur costs to implement these changes.</p>
<p>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</p>	<p>The changes to the regulation are minor and localities will not incur any costs as a result of these changes.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</p>	<p>The changes to the regulation are minor and individuals and businesses will not incur any costs as a result of these changes.</p>
<p>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. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Currently two tank vessel operators are required to provide financial assurance to Virginia for their vessels. All other vessels are meeting the requirements of Virginia’s regulation through complying with the Oil Pollution Act of 1990. The changes to the regulation are minor and the regulated community will not incur any costs as a result of these changes</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. 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.</p>	<p>The changes to the regulation are minor and the regulated community will not incur any costs as a result of these changes.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The changes to this regulation are minor changes to conform to state statute, clarify a regulatory requirement, correct a statutory citation, and remove an outdated regulatory review procedure. These changes will benefit the regulated community by minimizing confusion concerning financial assurance to be provided for vessels.</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

Sections 62.1-44.15 and 62.1-44.16 both contain specific requirements that tank vessels must meet in Virginia; however, both sections also recognize that the Oil Pollution Act of 1990 also places similar requirements on tank vessels. Since most vessels will be operated within the waters of multiple states, the regulation has been structured to allow tank vessel operators to meet the requirements of the regulation through meeting the requirements of the Oil Pollution Act of 1990. By recognizing the existing federal requirements, the Board minimizes the impact this regulation has on businesses (including small businesses). The Board maintains this regulation as required by state law and only smaller tank vessels (those between 15,000 gallons and 300 gross tons) interact with the Board to provide financial assurance and submit an ODCP. This regulation has been written to avoid having tank vessels become subject to Virginia requirements that differ from federal requirements which minimize compliance costs and the costs associated with demonstrating financial assurance.

Regulatory flexibility analysis

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.

The regulation has been structured to minimize the impacts to all businesses, including small businesses. The regulation mirrors the requirements of federal regulations and requirements established by the Oil Pollution Act of 1990. Since this regulation is based on federal regulations and requirements, implementing a less stringent compliance or reporting schedule would conflict with federal requirements and cause confusion among the regulated community.

The federal regulations and standards do not establish requirements specifically for small businesses. If the Board established different standards or requirements for small businesses, this would not reduce the burden on small businesses. Small businesses would still be required to meet federal standards when they operated in federal waters. This would actually increase confusion by having the small business maintain compliance with two different compliance requirements (Federal and Virginia) instead of only one (Federal). Due to the requirements of state statute, the Board is unable to exempt small businesses from all or parts of the regulation.

Family impact

Please assess the 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 impact the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. 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 and rationale
40 I		The Board may revoke the Oil Discharge Contingency Plan (ODCP) if the tank vessel is no longer in operation.	§62.1-44.34:15 lists the Board's authority to revoke an oil discharge contingency plan. Statute does not identify a vessel no longer in operation as a reason the Board may revoke an ODCP.
50 A		The operator of a tank vessel shall deposit with the board cash or its equivalent in the amount of \$500 per gross ton of such vessel upon entering state waters.	Language was revised to clarify that the operator may meet financial assurance requirements by having a Certificate of Financial Responsibility approved by the U.S. Coast Guard pursuant to §4202 of the Federal Oil Pollution Act of 1990 as allowed by §62.1-44.34:16 of the Code of Virginia.
50 D 4		Citation listed in 9VAC25-101-50 D 4 as §62.1-33.34:16 of the Code of Virginia.	Correction being made to reference the correct citation for the applicable statute. 9VAC25-101 D 4 now references §62.1-44.34:16 of the Code of Virginia.
70		Evaluation of the chapter	The regulation is being revised to repeal this regulatory language. Periodic reviews are to be conducted as required by the Governor's Executive Order.

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.

EPA- Environmental Protection Agency
ODCP- Oil Discharge Contingency Plan