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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)	9VAC25-580
VAC Chapter title(s)	Underground Storage Tanks: Technical Standards and Corrective Action Requirements
Date this document prepared	July 25, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

CFR- Code of Federal Regulation
USEPA – United States Environmental Protection Agency
UST- Underground storage tank

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 Underground Storage Tanks: Technical Standards and Corrective Action Requirements (9VAC 25-580) is the State Water Control Law (Chapter 3.1, Article 9 of the Code of Virginia). Specifically, subdivision 8 of § 62.1-44.34:9 authorizes the Board to promulgate such regulations as may be necessary to carry out its powers and duties with regard to underground storage tanks in accordance with applicable federal laws and regulations. Federal regulations (40CFR280) contain requirements for USTs.

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.

One alternative considered was to repeal the state regulation and rely on the federal UST regulation. Having the federal government administer the UST program and regulation in Virginia would likely result in delays for tank owners and persons remediating releases of petroleum from USTs. This would likely result in increased costs to the regulated community and potential damage to Virginia's environment, therefore this alternative was rejected.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's 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 advisory group was not formed to assist with the periodic review.

Two comments were received during the public comment period.

One commenter commented that the regulatory requirement that a monthly walkthrough inspection be performed every 30 days is cumbersome in the months with 31 days, which could result in a tank owner having to conduct or pay someone to conduct 13 walkthrough inspections in one year. The commenter suggests changing the regulation to mandate a "monthly" inspection with a maximum day limit between walkthrough inspections.

Response: DEQ understands the concern the "30 day" requirement for monthly walkthrough inspections causes during months that contain 31 days; however, the purpose of the 30-day requirement versus a monthly requirement is to avoid monthly inspections being conducted too far apart. For example, a walkthrough inspection conducted on day 1 of any given month and day 30 of the following month would technically meet a "monthly" requirement but would result in monthly inspections being performed almost 60 days apart, which conflicts with the clear intent of the regulatory language. Because of this, the regulation specifies 30 days. Virginia operates under federal program approval which allows Virginia to administer its own UST program in lieu of the USEPA; therefore, Virginia's UST regulation cannot be less stringent than the federal government. However, DEQ currently uses compliance discretion to address walkthrough inspections that were conducted at least every 31 days.

Another commenter commented that the requirement to test all overfill prevention equipment installed on a tank instead of just the primary equipment is burdensome. The commenter stated that there is no need to test both an electronic overfill alarm and a manual shutoff valve because the devices do not conflict with each other. Requiring testing of both is expensive, especially if the shutoff valve is seized due to ethanol impacts. The requirement to test all overfill equipment installed on a tank disincentivizes a tank owner to go “over and above” for additional protection.

Response: DEQ agrees that under normal circumstances, a high-level alarm and shutoff valve used to prevent tank overfills should not conflict with one another. However, it is possible for one to fail and cause the other device not to alert the transfer operator in enough time to prevent an overfill. For example, a high-level alarm may be set to alert an operator at 90%, whereas a shutoff valve may be set incorrectly at 98%. If the high-level alarm is not tested and fails, it could cause the product to reach 98% before the shutoff valve activates. If the shutoff valve does not activate until the tank is 98% full, an overfill of the tank will most likely occur because the transfer operator may not have time to shut off the delivery. Also, if the alarm is tested and the shutoff valve is not, industry practice is such that an overfill could still occur. Specifically, shutoff valves are generally visible in the tank fill pipe and if the delivery driver sees a shutoff valve in the fill pipe, they are likely to rely on that shutoff valve to activate and shut off flow of the product, rather than listening for the alarm. A transfer operator has no way of knowing if the shutoff valve is functioning properly and may mistakenly rely on untested and potentially faulty equipment to prevent an overfill. Finally, a subsequent facility owner or operator may rely on the untested equipment, assuming, understandably, that any installed equipment has been tested and is operating properly. Therefore, both devices will need to be tested for functionality and to ensure that all installed overfill prevention devices are operating properly.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, 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 technical standards that set forth compliance requirements designed to prevent and reduce the number of releases of petroleum and hazardous substances from USTs, measures to quickly detect any releases from USTs, and measures to ensure cleanup of contamination from releases from USTs. This 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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The regulation is effective and is being retained as is without making changes.

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

Two comments were received during the public comment period for the periodic review. DEQ's response is provided in the Public Comment section above.

The regulation is complex and technical in nature and is based on federal regulatory language. The regulation incorporates both federal requirements for USTs and state building code requirements for USTs. By maintaining consistency with the federal UST and state building code requirements, confusion within the regulated community is minimized.

This regulation was last amended in 2022 to accommodate a change in the statute transferring certain authorities from the State Water Control Board to the Department of Environmental Quality. The regulation is consistent with current federal requirements applicable to USTs.

The state regulation is written to be only as stringent as the federal UST requirements that sought to minimize where possible the economic impact of regulations on small businesses.

Family Impact

Please assess the potential impact 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.