



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

Fax: 804-698-4019 - TDD (804) 698-4021

www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482

To: The Honorable Robert F. McDonnell

The Honorable Patricia S. Ticer, Chair
Senate Committee on Agriculture, Conservation and Natural Resources

The Honorable Charles J. Colgan, Chair
Senate Committee on Finance

The Honorable Harvey B. Morgan, Chair
House Committee on Agriculture, Chesapeake and Natural Resources

The Honorable Lacey E. Putney, Chair
House Committee on Appropriations

The Honorable Harry R. Purkey, Chair
House Committee on Finance

From: David K. Paylor, Director

Date: October 1, 2011

Subject: 2011 Report: Evaluation of Administrative Fees for Aboveground Storage Tank Facilities, Pipeline Facilities and Tank Vessels that Store and Handle Oil

In accordance with § 62.1-44.34:21 of the *Code of Virginia*, the Virginia Department of Environmental Quality, on behalf of the State Water Control Board, has completed its evaluation of the Department's implementation of the fee programs for aboveground storage tank facilities, pipeline facilities and tank vessels that store and handle oil.

The Department of Environmental Quality is committed to ensuring that facilities and vessels that store and handle oil can take steps necessary to protect the environment and can contain, clean-up and mitigate an oil discharge within the shortest time feasible.

This report is being made available at <http://www.deq.virginia.gov/regulations/reports.html>. If you have any questions concerning this report or if you would like a hard copy of this report, please contact Angela Jenkins, Director of Policy at (804) 698-4268.

EVALUATION OF ADMINISTRATIVE FEES FOR
ABOVEGROUND STORAGE TANK FACILITIES, PIPELINE
FACILITIES AND TANK VESSELS THAT STORE AND
HANDLE OIL

*A Report to the Honorable Robert F. McDonnell, Governor and the Senate
Committees on Agriculture, Conservation and Natural Resources, and Finance;
and the House Committees on Appropriations, Agriculture, Chesapeake and
Natural Resources, and Finance*

Virginia Department of Environmental Quality

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Executive Summary

This report was prepared by the Virginia Department of Environmental Quality on behalf of the State Water Control Board pursuant to § 62.1-44.34:21 of the *Code of Virginia*. This report provides an evaluation on the Department of Environmental Quality's (DEQ) implementation of the fee programs established under Article 11 (Virginia Code § 62.1-44.34:14. *et seq.*) of the State Water Control Law (SWCL) for aboveground storage tank facilities, pipeline facilities and tank vessels that store and handle oil for the 2010 and 2011 fiscal years.

I. Background

Article 11 of the SWCL prohibits the discharge of oil into or upon state waters, lands and storm drain systems within the Commonwealth. Article 11 also governs the requirements for regulation of aboveground storage tank facilities, pipeline facilities and tank vessels that store and handle oil.

The Facility and Aboveground Storage Tank (AST) Regulation (9 VAC 25-91-10 *et seq.*) establishes requirements for facility operators of ASTs and pipelines to prevent the discharge of oil to state waters. An oil discharge contingency plan (ODCP) is required for all facilities with a storage capacity of 25,000 gallons or more of oil. Approved ODCPs are required to ensure that a facility can take steps necessary to protect the environment and to contain, clean up and mitigate an oil discharge within the shortest feasible time. The operator of the facility also is required to register all ASTs with a capacity greater than 660 gallons of oil. The Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation (9 VAC 25-640-10 *et seq.*) establishes financial responsibility requirements for facility operators of ASTs and pipelines having a maximum storage capacity of 25,000 gallons or greater of oil. These operators are required to demonstrate the ability to provide financial resources to meet the containment and cleanup requirements as a condition of operation.

The following is a summary of the regulated AST and pipeline facilities in Virginia:

| | |
|--|---------------------|
| Total number active ASTs: | 10,670 |
| Total number AST facilities: | 3,654 |
| Facilities with only one AST: | 1,903 |
| AST Facilities with ODCPs (= 25,000 gallons): | 686 |
| Average new AST facilities per year: | 140 |
| Total number active AST owners: | 1,945 |
| AST storage capacity of all active facilities: | 1.4 billion gallons |
| Regulated interstate pipeline facilities: | 2 |

Article 11 of the SWCL also requires that operators of tank vessels transporting or transferring oil in state waters have an ODCP and provide evidence of financial responsibility to ensure the operator has the capability to clean up a major oil spill. Article 11 of the SWCL allows operators of tank vessels to comply with this requirement by having an approved U.S. Coast Guard Vessel Response Plan and a U.S. Coast Guard Certificate of Financial Responsibility. No additional

approval by DEQ is required. Due to differences in applicability criteria, there are a small number of tank vessels (approximately 3 vessels in Virginia) that are not subject to the U.S. Coast Guard requirements but are required to have DEQ approval. The Tank Vessel Oil Discharge Contingency Plans and Financial Responsibility Requirements Regulation (9 VAC 25-101-10 *et seq.*) establishes requirements for approval of ODCPs and evidence of financial responsibility for these vessels.

II. Article 11 Authority for Collection of Fees

Virginia Code § 62.1-44.34:21 authorizes the State Water Control Board to collect administrative fees for the approval of facility and tank vessel ODCPs and for demonstrating evidence of financial responsibility. The legislation limits fees to the costs of implementing these two programs.

Virginia Code § 62.1-44.34:19.1 requires the Board to compile an inventory of AST facilities with a capacity of more than 1320 gallons of oil or individual aboveground storage tanks having a storage capacity of more than 660 gallons of oil and authorizes the collection of a fee not to exceed \$100 per facility or \$50 per tank, whichever is less. These fees must be paid at the time of registration. This registration must be renewed every five years.

III. Program Costs and Revenues

The following table shows the operating costs for the programs in FY 2010 and 2011. It should be noted that operating costs for this program fluctuate over a five-year cycle based on regulatory requirements for facilities to renew ODCPs and registrations. As workload fluctuates year to year, inspection resources are assigned, resulting in a corresponding increase or decrease in operating costs.

| PROGRAM | FY 10 Operating Costs | FY 11 Operating Costs |
|-----------------------------------|------------------------------|------------------------------|
| PERSONNEL | | |
| Facility ODCP | \$141,869 | \$117,892 |
| Facility Inspection/Compliance | \$284,964 | \$246,848 |
| Facility Financial Responsibility | \$13,375 | \$14,430 |
| AST Registration | \$50,215 | \$55,410 |
| Tank Vessel ODCP | \$0 | \$0 |
| NON-PERSONNEL | | |
| Administrative (all programs) | \$8,741 | \$9,884 |
| TOTAL | \$499,164 | \$444,462 |

The DEQ, on behalf of the Board, collects fees for AST, pipeline and tank vessel ODCP applications and for the registration of ASTs. Almost all ODCP application revenue is generated by AST facility applications. The table below lists revenue for FY 2010 and 2011.

| PROGRAM | FY 10 Revenue | FY 11 Revenue |
|-------------------|--------------------------|--------------------------|
| ODCP Applications | \$12,259 | \$10,534 |
| AST Registration | \$17,125 | \$14,225 |
| TOTAL | \$29,384 | \$24,759 |

In addition, the Virginia Petroleum Storage Tank Fund (Fund) generated revenue of \$32.97 million in FY 2010 and \$33.53 million in FY 2011 from fees collected on petroleum products sold in Virginia. Although the Fund was established primarily for the cleanup of petroleum contamination from leaking underground and aboveground storage tanks (reimbursement of tank owner cleanup up costs and program costs), Article 10 of the SWCL also allows use of the Fund for the costs of implementing the regulatory programs established in Article 11. Since the inception of Article 11, the Fund has been used to offset the difference between operating costs for the ODCP, Financial Responsibility and Registration Programs and the fees that are collected.

IV. Oil Discharge Contingency Plan Facility Fees

An ODCP is required for all facilities with a storage capacity of 25,000 gallons or more pursuant to 9 VAC 25-91-10 *et seq.* The regulation limits ODCP fees to submittal of new plans and no fee is charged for ODCP renewal reviews. The ODCP fees structure ranges from \$718 to \$3,353 as follows:

- a. For a facility with an aggregate aboveground maximum storage or handling capacity from 25,000 gallons up to and including 100,000 gallons of oil, the fee is \$718;
- b. For a facility with an aggregate aboveground maximum storage or handling capacity from 100,001 gallons up to one million gallons of oil, the fee is \$2,155;
- c. For a facility with an aggregate aboveground maximum storage or handling capacity of one million gallons or greater of oil, the fee is \$3,353; and
- d. For a pipeline, the average daily throughput of oil is determined and the fee is calculated using a, b or c above.

V. Above Ground Storage Tank Registration Fees

ASTs with a storage capacity greater than 660 gallons of oil must be registered pursuant to 9 VAC 25-91-10 *et seq.* The regulation requires registration fees for initial registration; new installations; conversion (i.e., underground storage tank (UST) conversion to an AST, storing a non-oil to an oil product, etc.); ASTs brought back into use after permanent closure; registration renewal (every five years); or changes of ownership.

For operators of ASTs subject to the registration requirements, the fee is \$25 for each AST up to a maximum of \$50 per facility. For an operator of multiple facilities the maximum fee is \$100 to register all of its facilities and ASTs.

VI. Tank Vessel Oil Discharge Contingency Plan Fees

For the small number of tank vessels that are not required to maintain an approved U.S. Coast Guard Vessel Response Plan, the following fee structure applies for the initial ODCP submittal to DEQ pursuant to 9 VAC 25-101-10 *et seq.* Renewals are not subject to the fee.

- a. For a tank vessel with a maximum storage, handling or transporting capacity of 15,000 gallons and up to and including 250,000 gallons of oil, the fee is \$718;
- b. For a tank vessel with a maximum storage, handling or transporting capacity greater than 250,000 gallons and up to and including 1,000,000 gallons of oil, the fee is \$2,155; and
- c. For a tank vessel with a maximum storage, handling or transporting capacity greater than 1,000,000 gallons of oil, the fee is \$3,353.

VII. Tank Vessel Financial Responsibility Fees

For the small number of tank vessels that are not required to maintain an approved U.S. Coast Guard Certificate of Financial Responsibility, an initial application fee of \$120 (a \$30 fee is required for each additional tank vessel requiring a copy of the accepted evidence of financial responsibility) pursuant to 9 VAC 25-101-10 *et seq.* Renewals are not subject to the fee.

VIII. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Fees

The regulations do not establish a fee schedule for approval of AST and pipeline financial responsibility demonstration.

IX. Virginia Petroleum Storage Tank Fund

Article 10 of the SWCL established the Fund and allows use of the Fund for the costs of carrying out the provisions of the regulatory programs of Article 11. Since the inception of Article 11, the Fund has been used to offset the difference between operating costs for the ODCP, Financial Responsibility and Registration Programs and the fees that are collected. To provide revenue for the Fund Article 10 imposes a one-fifth to three-fifths of one cent per gallon fee on regulated petroleum products sold in Virginia. This fee is monitored and is increased to three-fifths of one cent when the Fund has been, or is likely to be, reduced below \$3 million. The fee is reduced to one-fifth of one cent per gallon when the Fund has been restored to \$12 million.

Because of increased reimbursement claim demand in 1998 the fee was increased to three-fifths of one cent per gallon and has remained at that level. Prior to the 1998 fee increase, the revenue at one-fifth of one cent per gallon fee generated \$10 million annually. At the three-fifths of one cent per gallon fee, Fund revenue averages \$33.9 million annually (based upon an average of the last four years). Of that revenue, \$24.9 million is budgeted for claims, with the remainder used for providing alternate water supplies for petroleum contaminated water, DEQ contractor cleanups and other authorized program operating costs.

Article 10 of the SWCL authorizes delays in claims payments to maintain the Fund balance. In 1999 reimbursement claims exceeded funds, and reimbursement payments were delayed up to 12 months from the claim decision date. Reimbursement claim demand decreased in 2001 to sustainable levels and in October 2005 delayed payment ended.

Since Fund revenue is directly tied to number of gallons of petroleum sold, recent trends in consumers driving less and buying more fuel efficient cars have resulted in reduced revenues for the Fund. As compared to the highest revenue collection of \$38 million (in FY 2005), revenues collected in 2010 and 2011 are significantly lower at 32.9 million and 33.5 million respectively. Demands on the fund, which had been rising, have shown a slight decrease recently, largely due to an influx of federal stimulus dollars, but still outpace available revenues. Because of this asset/liability mismatch, reimbursement claims are once again being delayed, currently up to 180 days. DEQ keeps stakeholders informed regarding Fund revenue and demand status through up-to-date reports available at: <http://www.deq.virginia.gov/tanks/reimbrs.html>. For a variety of reasons, stakeholders are not supportive of any structural changes to the Fund at this time.