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TO: The Honorable Timothy M. Kaine

The Honorable Charles R. Hawkins, Chair
Senate Agriculture, Conservation and Natural Resources Committee

The Honorable John H. Chichester, Chair
Senate Finance Committee

The Honorable M. Kirkland Cox, Chair
House Agriculture, Chesapeake and Natural Resources Committee

The Honorable Harry R. Purkey, Chair
House Finance Committee

FROM: David K. Paylor 

SUBJECT: 2007 Report: Evaluation of Administrative Fees Established Under Article 11 of the State Water Control Law 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 Department of Environmental Quality 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 feasible time.

This report is being made available at www.deq.virginia.gov/regulations/reports.html. If you need further information or would like a hard copy of this report, please contact Rick Linker, Assistant Director of Legislative and Legal Affairs, at 804-698-4195.

**Evaluation of Administrative Fees Established
Under Article 11 of State Water Control Law for
Aboveground Storage Tank Facilities, Pipeline Facilities and
Tank Vessels that Store and Handle Oil**



***A Report to the Honorable Timothy M. Kaine, 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
Waste Division
Office of Spill Response & Remediation**

October 2007

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Executive Summary

This report is submitted to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Agriculture, Chesapeake and Natural Resources, and Finance 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. The reporting period is for the fiscal years (FY) of 2006 and 2007.

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 gallon or more of oil. Approved ODCPs are required to ensure that the 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 is also required to register all ASTs with a capacity greater than 660 gallons of oil. The AST 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:	10,306
Total number AST facilities:	3,406
Facilities with only one AST:	1,772
AST Facilities with ODCPs (= 25,000 gallons):	727
Average new AST facilities per year:	145
Total number active AST owners:	1,766
AST storage capacity of all active facilities:	1.47 billion gallons
Regulated interstate pipeline facilities:	2

Article 11 of 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 capability to clean up a major oil spill. The 2004 General Assembly made changes to Article 11 to allow operators

of tank vessels to comply with state law by simply 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 (fewer than 6 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. (Administrative Fees) authorizes DEQ 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 DEQ’s implementation of these two programs.

Virginia Code § 62.1-44.34:19.1. (Registration of ASTs) requires DEQ 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. Legislation also requires payment of the fees at the time of registration and a registration renewal of no less than every five years.

III. Program Costs and Revenues

The following table shows the operating costs for the programs established under Article 11 for FY 2006 and 2007.

PROGRAM	FY 06 Operating Costs	FY 07 Operating Costs
PERSONNEL		
Facility ODCP	\$198,671	\$157,666
Facility Inspection/Compliance	\$170,335	\$114,226
Facility Financial Responsibility	\$11,710	\$15,678
AST Registration	\$39,409	\$40,979
Tank Vessel ODCP	\$0	\$0
NON-PERSONNEL		
Administrative (all programs)	\$12,569	\$9,481
TOTAL	\$432,694	\$338,030

The DEQ 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 2006 and 2007.

PROGRAM	FY 06 Revenue	FY07 Revenue
ODCP Applications	\$13,025	\$12,208
AST Registration	\$15,320	\$13,800
TOTAL	\$28,345	\$26,008

In addition, the Virginia Petroleum Storage Tank Fund (Fund) generated revenue of \$37 million in FY 2006 and \$36 million in FY 2007 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 DEQ program costs), Article 10 of SWCL also allows use of the Fund for DEQ costs in 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 DEQ operating costs for the ODCP, Financial Responsibility and Registration Programs and the fees that are collected.

IV. Oil Discharge Contingency Plan Facility Fees

Virginia Regulation 9 VAC 25-91-10 et seq. requires an ODCP for all facilities with a storage capacity of 25,000 gallons or more. 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 and including one million gallons of oil, the fee is \$2,155;
- c. For a facility with an aggregate aboveground maximum storage or handling capacity of greater than one million gallons 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 per subdivisions a, b or c above.

V. Above Ground Storage Tank Registration Fees

Virginia Regulation 9 VAC 25-91-10 et seq. requires registration of ASTs with a storage capacity greater than 660 gallons of oil. The regulation requires registration fees for initial registration; new installations; conversion (i.e., UST 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, Virginia Regulation 9 VAC 25-101-10 et seq. establishes the following fee structure for initial ODCP submittal to DEQ. 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, Virginia Regulation 9 VAC 25-101-10 et seq. establishes an initial application fee of \$120 and a \$30 fee for each additional tank vessel requiring a copy of the accepted evidence of financial responsibility. Renewals are not subject to the fee.

VIII. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Fees

Virginia Regulation 9 VAC 25-640-10 et seq. does 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 DEQ costs in 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 DEQ 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 maintained at an appropriate operating level and is increased to three fifths of one cent when the Fund has been, or is likely to be, reduced below three

million dollars. 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 \$37 million annually (based upon an average of the last four years). Of that revenue, \$26 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.

In 1999 reimbursement claims exceeded funds and reimbursement payments were delayed up to 12 months from the claim decision date. Starting in 2001 the total reimbursement claim demand decreased and in October 2005 delayed payment ended. Since that time Fund revenue has decreased from \$38 million in FY 2005 to \$36 million in FY 2007 while claim demand has increased. Because of these changes current projections indicate that in early 2008 reimbursement claims will exceed Fund revenue and reimbursements payments will again be delayed. DEQ is keeping stakeholders informed on the Fund revenue status and demand projections.