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To: The Honorable Terence R. McAuliffe, Governor

The Honorable Richard H. Stuart, Chair
Senate Committee on Agriculture, Conservation and Natural Resources

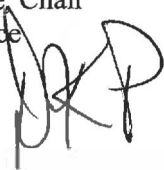
The Honorable Thomas K. Norment, Jr., Co-Chair
Senate Committee on Finance

The Honorable Emmett W. Hanger, Jr., Co-Chair
Senate Committee on Finance

The Honorable Daniel W. Marshall, III Chair
House Committee on Agriculture, Chesapeake and Natural Resources

The Honorable S. Chris Jones, Chair
House Committee on Appropriations

The Honorable R. Lee Ware, Chair
House Committee on Finance

From: David K. Paylor, Director 

Date: October 2, 2017

Subject: 2017 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.

This report is being made available on DEQ's website and can be found at <http://www.deq.virginia.gov/LawsRegulations/ReportstotheGeneralAssembly.aspx>. If you have any questions concerning this report or if you would like a hard copy of this report, please contact Angie Jenkins, Policy Director 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 Terence R. McAuliffe, 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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Introduction

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 of the Department of Environmental Quality's (DEQ's) 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 2016 and 2017 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) 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 that is greater than 660 gallons of oil. The Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation (9 VAC 25-640) 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:	10,972
Total number AST facilities:	4003
Facilities with only one AST:	2030
AST Facilities with ODCPs (\geq 25,000 gallons):	610
Average new AST facilities per year:	124
Total number of active AST owners:	2122
AST storage capacity of all active facilities:	1.38 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 only two tank vessels in Virginia that are not subject to the U.S. Coast Guard financial responsibility requirements but are required to provide evidence of financial responsibility to DEQ. The Tank Vessel Oil Discharge Contingency Plans and Financial Responsibility Requirements Regulation (9 VAC 25-101) 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 statute 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 registration fees were discontinued by regulatory amendments effective November 1, 2015. Section V discusses this change in more detail.

III. Program Costs and Revenues

The following table shows the operating costs for the programs in FY 2016 and 2017. It should be noted that operating costs for these programs 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. Registration workload also fluctuates since operators are required to renew their registrations on a five-year cycle. Non-personnel costs continued to be elevated in 2016 and 2017 due to the expense associated with modifying the program-specific portions of the agency’s comprehensive database.

PROGRAM	FY 16 Operating Costs	FY 17 Operating Costs
PERSONNEL		
Facility ODCP	\$186,938	\$131,764
Facility Inspection/Compliance	\$153,754	\$158,183
Facility Financial Responsibility	\$16,275	\$16,004
AST Registration	\$58,156	\$72,134
Tank Vessel ODCP	\$0	\$161
NON-PERSONNEL		
Administrative (all programs)	\$59,449	\$56,202
TOTAL	\$474,572	\$434,288

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 2016 and 2017. As noted above, AST registration fees were eliminated in November 2015. As such, the 2016 AST registration revenue represents just 4 months of collection during the reporting period.

Program	Revenue	
	FY 2016	FY 2017
ODCP Applications	\$7,999	\$6463
AST Registration	\$4,200	\$0
Total	\$12,199	\$6,463

In addition, the Virginia Petroleum Storage Tank Fund (Fund) generated revenue of \$33.6 million in FY 2016 and \$33.9 million in FY 2017 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. Beginning in December 2015, it has been used to cover the full operating costs of the AST Registration program.

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. 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. Aboveground Storage Tank Registration Fees

ASTs with a storage capacity greater than 660 gallons of oil must be registered pursuant to 9 VAC 25-91. While the statute authorizes collection of a registration fee, the vast majority of program operating costs have historically been covered by revenue other than these registration fees. Given the small amount of revenue generated by the fees and the availability of other revenues to cover these costs, the administrative burden to collect and account for the fees was not justified. As a result, revisions to the regulation effective November 1, 2015 eliminated AST registration fees.

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. 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. 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.

Article 10 of the SWCL authorizes delays in claims payments to maintain the Fund balance. As reported in previous years, the Fund remains in delayed payment status, and Fund revenues continue to fall short of historic levels. As compared to the highest revenue collection of \$38 million (in FY 2005), fund fee revenues collected in 2016 and 2017 are significantly lower at \$33.6 million and \$33.9 million respectively. Demands on the Fund have dropped slightly in the last couple of years but continue to outpace available revenues. Because of this asset/liability mismatch, reimbursement claim payments are still delayed, currently at 215 days. DEQ keeps stakeholders informed regarding Fund revenue and demand status through up-to-date reports available at:

<http://www.deq.virginia.gov/Programs/LandProtectionRevitalization/PetroleumProgram/Reimbursement.aspx>.