Form: TH- 03

Virginia Regulatory Town Hall

Final Regulation
Agency Background Document

Agency Name:	State Air Pollution Control Board
VAC Chapter Number:	9 VAC 5 Chapter 80
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Action Title:	New source review for sources of hazardous air pollutants, Article 7 (9 VAC 5-80-1400 et seq.) of 9 VAC 5 Chapter 80 (Revision J97)
Date:	Enter Date

Please refer to the Administrative Process Act (§ 9-6.14:9.1 et seq. of the Code of Virginia), Executive Order Twenty-Five (98), and the Virginia Register Form, Style and Procedure Manual for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.

The regulation establishes a new source review permit program for major sources of hazardous air pollutants (HAPs) whereby owners are required to obtain a permit prior to beginning construction or reconstruction of a new facility in order to implement the requirements of § 112(g) of the Clean Air Act. The major components of the regulation address the following subjects: applicability; general requirements; permit application requirements; application information required; action on permit applications; public participation; standards and conditions for granting permits; application review and analysis; compliance determination and verification by performance testing; permit invalidation, rescission, revocation and enforcement; existence of permit no defense; compliance with local zoning requirements; transfer of and changes to permits; administrative and minor permit amendments; significant amendment procedures; reopening for cause; requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirements.

Adoption of this regulation provides the Commonwealth with a program that satisfies the applicable requirements of 40 CFR §§ 63.40 through 63.44.

Substantive Changes Made Since the Proposed Stage

Please briefly and generally summarize any substantive changes made since the proposed action was published. Please provide citations of the sections of the proposed regulation that have been substantively altered since the proposed stage.

The regulation applies to the construction or reconstruction of a major source of HAPs. Originally, the regulation was proposed to encompass permitting for all potential major sources of HAPs in addition to those affected by § 112(g) of the federal Clean Air Act. Thus, a major source for this rule was originally a § 112(g) source, a § 112(i) source, or a 40 CFR Part 61 source. During the public comment period, comments were submitted which raised issues that necessitated substantive changes to the original proposal; therefore, the proposal was revised such that it applies only to § 112(g) sources. The substantive changes that reflect the change in the overall approach to the regulation are found in 9 VAC 5-80-1400 (Applicability), 9 VAC 5-80-1410 (Definitions), and 9 VAC 5-80-1420 (General).

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On September 29, 1999, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution", specifically, New Source Review for Sources of Hazardous Air Pollutants (9 VAC Chapter 80, Article 7). The regulation is to be effective on January 1, 2000.

Basis

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation adopted. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to adopt the regulation and that it comports with applicable state and/or federal law.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board

possesses the statutory authority to adopt the regulation has been obtained.

Purpose

Please provide a statement explaining the rationale or justification of the regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulation is to control emissions of hazardous air pollutants (HAPs) from major sources and to protect public health and welfare by establishing the procedural and legal basis for the issuance of a new source permit for proposed new or reconstructed facilities that will (i) enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and (ii) provide a state and federally enforceable mechanism to implement permit program requirements. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending on the results of the preconstruction review. The regulation is being proposed to meet the requirements of § 112(g) of the federal Clean Air Act, and 40 CFR Part 63 Subpart B of federal regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the changes.

1. The regulation delineates permitting requirements for major sources of HAPs, specifically, those covered by § 112(g).

2. Unlike other new source permitting regulations, this regulation applies only to constructed or reconstructed sources. It does not apply to modifications or relocations.

3. In order to be consistent with the board's existing permit regulations, the regulation was modelled on Chapter 80 rules, and includes general permitting requirements such as public participation requirements.

4. The following general principles govern MACT determinations:

    a. The MACT emission limitation may not be less stringent than the emission control achieved in practice by the best controlled similar source.

b. The MACT emission limitation must achieve the maximum degree of reduction in emissions of HAPs which can be achieved by using control technologies that can be identified from existing available information, taking into consideration costs and any non-air quality health and environmental impacts and energy requirements.

c. The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof.

d. If EPA has either proposed a relevant emission standard or developed a presumptive MACT determination for the relevant source category, then the MACT requirements must consider such proposed or presumptive emission limitations and requirements.

5. A MACT determination is not necessary if the source can demonstrate to the board that the HAPs will be controlled by previously installed emission control equipment that represents best available control technology (BACT), lowest achievable emission rate (LAER), or the level of control currently achieved by other well-controlled similar sources.

6. Information to be included in the permit application is specified, including information needed by the board to determine MACT.

7. Compliance determination and verification by performance testing are specified.

8. Requirements for sources subject to a subsequently promulgated MACT standard or MACT requirements are explained.

9. Administrative procedures such as permit invalidation, rescission, revocation and enforcement; compliance with local zoning requirements; transfer of and changes to permits; administrative and minor permit amendments; significant amendment procedures; and reopening for cause are included.

Issues

Please provide a statement identifying the issues associated with the regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1. Public: The general public will benefit from this rule because it will control emissions of hazardous air pollutants, which are a source of serious health and welfare effects. The advantages to reducing HAPs include the reduction of disease incidence and damage to property. A limited segment of the public may experience an economic disadvantage where an affected source must install pollution control devices and thereby reduce profits or increase costs to customers; however, such controls are implemented based on economic feasibility, thus limiting the disadvantage.

Implementation of the regulation is also an advantage to industry in general, as the regulation is intended to act as an interim program for sources for which EPA has missed a regulatory deadline; such sources will benefit by being able to meet EPA requirements proactively rather than reactively.

2. Department: The department will experience benefits in the form of increased source information, which is useful for short- and long-term air quality planning. Some additional resources in terms of personnel and effort involved in permit review, preparation, and inspection may be expended, which would be a disadvantage.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

A summary of the public testimony, along with the agency response, is attached.

Detail of Changes

Please detail any changes, other than strictly editorial changes, made since the publication of the proposed regulation. This statement should provide a section-by-section description of changes.

1. The regulation has been revised such that it applies only to § 112(g) sources. Therefore, the applicability of the regulation has been revised such that it does not apply to affected sources, that is, the regulation does not apply to sources regulated by a MACT standard. [9 VAC 5-80-1410 C, definition of "affected source"]

2. The provisions of the regulation requiring implementation of §§ 61.06, 61.07, and 61.08 of 40 CFR Part 61, and § 63.5 of 40 CFR

Part 63, have been deleted. [9 VAC 5-80-1420 G, 9 VAC 5-80-1420 H, 9 VAC 5-80-1470 A 3, 9 VAC 5-80-1470 A 4, 9 VAC 5-80-1490 E]

3. Other changes necessary to reflect the purpose of the new proposal have been made. [9 VAC 5-80-1410, definitions of "available information," "best controlled similar source," " case-by-case MACT determination," "emission standard," "performance test," "source category test"; 9 VAC 5-80-1420 C, 9 VAC 5-80-1420 E, 9 VAC 5-80-1420 F, 9 VAC 5-80-1420 G 6, 9 VAC 5-80-1440 B, 9 VAC 5-80-1440 B 14, 9 VAC 5-80-1440 C, 9 VAC 5-80-1440 D, 9 VAC 5-80-1450 H, 9 VAC 5-80-1470 A 2, 9 VAC 5-80-1470 B]

4. Other changes made in response to public comment have been made. [9 VAC 5-80-1400 F, 9 VAC 5-80-1410, definitions of "federally enforceable," "potential to emit," "secondary emissions"; 9 VAC 5-80-1420 C, 9 VAC 5-80-1460 G, 9 VAC 5-80-1470 D a, 9 VAC 5-80-1540 A 4, 9 VAC 5-80-1560 A 4 a, 9 VAC 5-80-1560 A 5, 9 VAC 5-80-1570 A 2 c (1), 9 VAC 5-80-1570 A 2 d, 9 VAC 5-80-1590 A]

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD

SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION J97
CONCERNING

NEW SOURCE REVIEW FOR SOURCES OF HAZARDOUS AIR POLLUTANTS
(9 VAC 5 CHAPTER 80)

INTRODUCTION

At the January 1999 meeting, the Board authorized the Department to promulgate for public comment a proposed regulation revision concerning new source review for sources of hazardous air pollutants (HAPs).

A public hearing was advertised accordingly and held in Richmond on January 20, 1999 and the public comment period closed on February 5, 1999. In response, comments were submitted which raised issues that necessitated substantive changes to the original proposal; therefore, the proposal was republished for public comment. Notice of the opportunity to comment on the reproposal was given to the public throughout the state on August 9, 1999. The new comment period closed on September 8, 1999. The proposed regulation amendments are summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering new source review for sources of HAPs. A summary of the original amendments follows:

1. The regulation was structured to encompass permitting for all potential major sources of HAPs in addition to those affected by ' 112(g). Thus, a major source for the purposes of this rule may be a ' 112(g) source, a ' 112(i) source, or a 40 CFR Part 61 source. Most of the permits issued under this rule will be ' 112(g) permits requiring a MACT determination.

2. Unlike other new source permitting regulations, this regulation applies only to constructed or reconstructed sources. It does not apply to modifications or relocations.

3. In order to be consistent with the board's existing permit regulations, the regulation was modelled on Chapter 80 rules, and includes general permitting requirements such as public participation requirements.

4. The provisions of the rule concerning determination of case-by-case MACT apply only to ' 112(g) sources.

5. The following general principles govern MACT determinations:

a. The MACT emission limitation may not be less stringent than the emission control achieved in practice by the best controlled similar source.

b. The MACT emission limitation must achieve the maximum degree of reduction in emissions of HAPs which can be achieved by using control technologies that can be identified from existing available information, taking into consideration costs and any non-air quality health and environmental impacts and energy requirements.

c. The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof.

d. If EPA has either proposed a relevant emission standard or developed a presumptive MACT determination for the relevant source category, then the MACT requirements must consider such proposed or presumptive emission limitations and requirements.

6. A MACT determination is not necessary if the source can demonstrate to the board that the HAPs will be controlled by previously installed emission control equipment that represents best available control technology (BACT), lowest achievable emission rate (LAER), or the level of control currently achieved by other well-controlled similar sources.

7. Information to be included in the permit application is specified, including information needed by the board to determine MACT or other applicable emission limitations.

8. Compliance determination and verification by performance testing are specified.

9. Requirements for sources subject to a subsequently promulgated MACT standard or MACT requirements are explained.

10. Administrative procedures such as permit invalidation, rescission, revocation and enforcement; compliance with local zoning requirements; transfer of and changes to permits; administrative and minor permit amendments; significant amendment procedures; and reopening for cause are included.

SUMMARY OF CHANGES TO INITIAL PROPOSAL

Below is a brief summary of the substantive changes made to the initial proposal which were published for a second public comment period.

1. The regulation has been revised such that it applies only to ' 112(g) sources. Therefore, the applicability of the regulation has been revised such that it does not apply to affected sources, that is, the regulation does not apply to sources regulated by a MACT standard.

2. The provisions of the regulation requiring implementation of '' 61.06, 61.07, and 61.08 of 40 CFR Part 61, and ' 63.5 of 40 CFR Part 63, have been deleted.

3. Other changes necessary to reflect the purpose of the new proposal have been made.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Richmond, Virginia on January 20, 1999. Seven persons attended the hearing, none of whom offered testimony; and eleven additional written comments were received during the public comment period. As required by law, notice of this hearing was given to the public on or about December 7, 1999 in the Virginia Register and in seven major newspapers (one in each Air Quality Control Region) throughout the Commonwealth. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the Department's list to receive notices of proposed regulation revisions. Notice of the reproposed revision and the opportunity to comment was given to the public on August 9, 1999 by mail to those persons on the Department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the public participation report which is on file at the Department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Board's response (analysis and action taken). Comments received during the first comment period are found in items 1 through 17, while comments received during the second comment period are found in items 18 through 26. Each issue is discussed in light of all of the comments received that affect that issue. The Board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The Board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT:** Applicability

   COMMENTER: U.S. Environmental Protection Agency

   TEXT: 9 VAC 5-80-1400 F should be reworded to include the situation where the electric utility steam generating units and research and development activities are added to the source category list pursuant to ' 112(c) of the Clean Air Act. As currently worded, if either of these industries were to construct or reconstruct after EPA had added them to the source category list but before EPA promulgated a MACT standard, Virginia would not need to make a case-by-case MACT determination pursuant to ' 112(g).

   RESPONSE: This comment is acceptable, and the proposal has been revised accordingly.

2. **SUBJECT:** Definition of "major source."

COMMENTER: U.S. Environmental Protection Agency

TEXT: The definition of major source in 9 VAC 5-80-1410 is not as stringent as the definition of major source provided in 40 CFR Part 63, subpart A (that is, the proposal's definition does not include "any lesser quantity which is established by the Administrator"). However, EPA realizes that, legally, Virginia cannot include provisions in its regulations that would automatically incorporate federal requirements as enforceable state requirements without deliberate action of the State Air Pollution Control Board. This legal restriction was outlined in your letter of February 27, 1997 to EPA and subsequently found to be acceptable to EPA in its Interim Approval of Virginia's Operating Permit Program (June 10, 1997 Federal Register Notice). EPA is requesting that Virginia commit to making the necessary changes to the regulation should EPA establish lesser quantities.

RESPONSE: This comment is acceptable; the implementation document for Virginia's Title V program reiterates Virginia's commitment to revise the regulations when EPA revises theirs. No change is needed to the proposal as a result of this comment.

3. **SUBJECT:** Definition of "potential to emit."

COMMENTER: U.S. Environmental Protection Agency

TEXT: The proposal defines potential to emit (PTE) to include "any physical or operational limitation" where the "limitation or the effect it would have on the emission is state OR federally enforceable." In order for this definition to be as stringent as EPA's definition, Virginia would have to maintain that the limit is federally enforceable. Due to several court decisions addressing the requirement in EPA's regulatory definition of PTE under the MACT, new source review, and prevention of significant deterioration programs, EPA is currently engaged in a rulemaking process to consider amendments to the current requirements. In National Mining Association v. EPA, the D.C. Circuit questioned whether the federal enforceability requirement in the General Provisions to 40 CFR Part 63 was "necessary." The court remanded but did not vacate the definition of PTE in the General Provisions. Therefore, EPA's definition still stands. Pending EPA rulemaking, Virginia can use the "transition policy" guidance dated January 25, 1995 and extended on July 10, 1998 to December 31, 1999 in making determinations on whether a source is a "synthetic minor" source for the purposes of ' 112(g).

RESPONSE: This comment is acceptable, and the proposal has been revised accordingly.

4. **SUBJECT:** Definition of "potential to emit."

COMMENTER: U.S. Environmental Protection Agency

TEXT: Secondary emissions are excluded from the definition of PTE. This is inconsistent with the definition of PTE in 40 CFR Part 63 subpart A; EPA recommends consistency between the two definitions.

RESPONSE: The proposed definition was originally written to be consistent with the new source review regulations, specifically, prevention of significant deterioration (PSD). However, for the purposes of this proposal, the definition should also be consistent with Part 63. Therefore, the proposal has been revised accordingly.

5. **SUBJECT:** Public participation.

COMMENTER: U.S. Environmental Protection Agency

TEXT: 9 VAC 5-80-1460 E indicates that all permit applications require a public comment period. However, 9 VAC 5-80-1460 G implies that public comment periods may not be necessary in certain instances ("when a public comment period and public hearing is necessary..."). Please clarify.

RESPONSE: All permit applications require a public comment period (as required in 9 VAC 5-80-1460 E), but only permit applications with the potential for public interest concerning air quality issues must hold a public hearing (as required in 9 VAC 5-80-1460 F). Both public comment periods and hearings must be announced to the public as described in 9 VAC 5-80-1460 G; the language has been revised to clarify that while both conditions require public notice, all permit applications will require at a minimum a public comment period, while some applications will also possibly require a public hearing, at the board's discretion.

6. **SUBJECT:** Standards and conditions for granting permits.

COMMENTER: U.S. Environmental Protection Agency

TEXT: In 9 VAC 5-80-1470 D, why would fuel sulfur limits be necessary for regulating emissions of HAPs?

RESPONSE: Fuel sulfur limits are not necessary for regulating emissions of HAPs; the proposal has been revised accordingly.

7. **SUBJECT:** Application review and analysis.

COMMENTER: U.S. Environmental Protection Agency

TEXT: It is not clear from the procedures outlined in 9 VAC 5-80-1490 C, D, E and F that sources subject to 40 CFR Part 61 and Part 63 will be tested in accordance with the specific requirements of the relevant NESHAP or MACT. EPA recommends that the language in these sections be modified to ensure that the provisions of 9 VAC 5-80-1490 do not override the applicable testing and reporting requirements in the relevant NESHAP or MACT.

RESPONSE: This comment is acceptable, and the proposal has been revised accordingly.

8. **SUBJECT:** General terminology.

COMMENTER: Merck & Company, Inc., Virginia Manufacturers' Association

TEXT: The proposal frequently uses the term "MACT standard" when the appropriate term should be one with a wider scope, such as " ' 112 standard." For example, the definition of "affected source" in 9 VAC 5-80-1410 C should read as follows: "'Affected source' means the stationary source, the group of stationary sources, or the portion of a stationary source which is not regulated by a ' 112 standard." The proposal should define the term " ' 112 standard" to mean standards promulgated by EPA pursuant to ' 112(d) (MACT standards), ' 112(f) (residual risk-based standards), and ' 112(h) (work practice standards and other requirements). All sources subject to a ' 112(d), (f), or (h) standard adopted by EPA are so-called " ' 112(i) sources" and for the purposes of preconstruction approval (i.e., permitting) should be treated the same.

RESPONSE: The proposal was originally structured to encompass permitting for all potential major sources of HAPs in addition to those affected by ' 112(g): ' 112(g) sources, ' 112(i) sources, or 40 CFR Part 61 sources. Since the regulation has been restructured to include only ' 112(g) sources, it is appropriate that it refer only to MACT sources. For clarity, the terms "relevant standard" and "MACT determination" were replaced with the more commonly known and understood terms "MACT standard" and "case-by-case MACT determination."

In 40 CFR Part 63, "relevant standard" is defined, in part, as being an "emission standard." An "emission standard" is then defined as a standard promulgated pursuant to ' ' 112(d), (h), or (f) of the Clean Air Act. In Virginia's regulations, the term "emission standard" has been defined as the 40 CFR Part 60 standards incorporated into Virginia's 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.). That is, EPA's Part 63 standards (' ' 112(d), (h), and (f)) are included in Virginia's regulations at Chapter 60. As defined in 40 CFR 63.2, a "relevant standard" may be an emissions standard, an alternative emission standard, an alternative emission limitation, or an equivalent emission limitation established pursuant to ' 112 that applies to the source regulated by the standard or limitation.

No revision has been made to the proposal as a result of this comment.

9. **SUBJECT:** Applicability.

COMMENTER: Merck & Company, Inc., Virginia Manufacturers' Association

TEXT: We has serious concerns arising from the use of the term "affected source" to mean the opposite of what it means under EPA's Part 63, subpart A definitions and arising from the substitution of the term "major source" for "affected source" in the applicability provisions of the rule. This substitution has the potential to expand the universe of sources subject to the new source review requirement in cases where an EPA ' 112 standard, e.g., a ' 112(d) MACT standard, by its own terms, defines the affected source subject to the standard to be something other than a major source of HAP emissions, as was the case in the proposed pharmaceutical MACT and may be true in other cases as well.

To rectify this problem, we advocate the following wording change to 9 VAC 5-80-1420 H:

> For sources subject to 40 CFR Part 63, subpart A, the provisions of 40 CFR 63.5 shall be implemented through this article. Permits issued under this article shall be the administrative mechanism for issuing preconstruction approvals as required by 40 CFR 63.5. Permits issued under this article to implement 40 CFR 63.5 shall only be required when preconstruction approval is required by 40 CFR 63.5. In cases where there are differences between the provisions of this article and the provisions of 40 CFR 63.5, the more restrictive provisions shall apply.

These revisions (and conforming changes elsewhere in the rule) would make it clear that for sources subject to an EPA promulgated ' 112 standard, a permit is required only when and to the extent the source must obtain preconstruction approval as required by 40 CFR 63.5 and the relevant EPA ' 112 standard.

The revisions above also reflect our understanding of the intent that the proposal be no more stringent than 40 CFR Part 63.5 with respect to ' 112(i) sources. We have previously expressed concern to the Department about the language in the last sentence of 9 VAC 5-80-1420 H (the last sentence in the revised provisions set out above). However, we have retained this sentence in our recommended revision of 9 VAC 5-80-1420 H with the understanding that other changes to the proposal could be made to ensure that the proposal is no more stringent than 40 CFR 63.5. If these additional changes are not adopted, the regulation will be vastly more stringent and burdensome on ' 112(i) sources than required by EPA. Accordingly, if the additional changes are not incorporated, the last sentence in 9 VAC 5-80-1420 H should be stricken.

RESPONSE: The regulation was originally structured to encompass permitting for all potential major sources of HAPs in addition to those affected by ' 112(g); thus, a major source for the purposes of the original rule could have been a ' 112(g) source, a ' 112(i) source, or a 40 CFR Part 61 source. The regulation has been revised such that it applies only to ' 112(g) sources.

To this end, the applicability of the regulation has been revised such that it does not apply to affected sources, that is, the regulation does not apply to sources regulated by a MACT standard. The provisions of the regulation requiring implementation of '' 61.06, 61.07, and 61.08 of 40 CFR Part 61, and ' 63.5 of 40 CFR Part 63, have been deleted.

10. **SUBJECT:** Application requirements.

COMMENTER: Merck & Company, Inc., Virginia Manufacturers' Association

TEXT: The application information demands are unwarranted and needlessly burdensome in cases where an owner seeks a permit for the construction or reconstruction of a major source (including a major process or production unit) that will, upon operation, be subject to an EPA promulgated ' 112 standard (i.e., a ' 112(i) source). In these cases, the preconstruction

review is cut and dried -- HAPs must be controlled by the application of MACT or other ' 112 standard adopted by EPA. This preconstruction review is a vastly easier process than for an application for a "' 112(g) source," where the DEQ must make a case-by-case MACT determination. In recognition of this, ' 112 standards may specify reduced application information. For example, in the Pharmaceutical MACT, EPA eliminated several of the application requirements that are specified in the proposal (see 40 CFR 63.1259(a)(5)). If adopted as proposed, Article 7 would override the federal requirements and establish more stringent application requirements for pharmaceutical sources and perhaps other sources as well.

RESPONSE: As discussed in the response to comment 9, the regulation has been revised to apply only to ' 112(g) sources.

Also note that by its existence, the pharmaceutical MACT excludes pharmaceutical sources from ' 112(g) requirements--case-by-case MACT determinations required by ' 112(g) are for sources without a final MACT. If a MACT has been promulgated by EPA, then the sources must meet the requirements of that particular MACT, not the requirements of the Virginia regulation.

No change has been made to the proposal as a result of this comment.

11. **SUBJECT:** Processing of applications.

COMMENTER: Merck & Company, Inc., Virginia Manufacturers' Association

TEXT: In view of the simplified preconstruction review required for sources subject to an EPA promulgated ' 112 standard, the time allowed in the proposal for issuance of the preconstruction permit (up to 180 days from receipt of a complete application) is excessive. Such a delay may be needlessly detrimental to major HAP-emitting sources facing critical construction schedules. In 40 CFR 63.5, EPA has established a requirement for approval or denial of a complete application within 60 days of receipt. We advocate separating the provision dealing with the Department's action on applications into two subsections of 9 VAC 5-80-1450, one addressing action on permit applications for the construction or reconstruction of affected sources (the 112(g) sources needing case-by-case MACT determinations), and another addressing action on permit applications for the construction or reconstruction of major sources subject to a ' 112 standard (the ' 112(i) sources).

RESPONSE: As discussed in the response to comment 9, the regulation has been revised to apply only to ' 112(g) sources.

12. **SUBJECT:** Public participation.

COMMENTER: Merck & Company, Inc., Virginia Manufacturers' Association

TEXT: Public participation in the issuance of a preconstruction approval (permit) is unwarranted and unnecessary for ' 112(i) sources subject to an EPA-promulgated ' 112 standard. Public participation is unwarranted because the determination of the applicable emission control technology is cut and dried in these cases. Such sources must comply with the EPA adopted standards applicable to them. Public participation is also unnecessary for these sources. Neither the Clean Air Act nor EPA's regulations in 40 CFR 63.5 require public participation in the issuance of preconstruction approval to ' 112(i) sources. There are simply no legal or practical reasons why the Department and a ' 112(i) source owner should be forced to go through the expense, trouble, and delay of public comments and public hearings for an Article 7 permit.

RESPONSE: As discussed in the response to comment 9, the regulation has been revised to apply only to ' 112(g) sources.

No change has been made to the proposal as a result of this comment.

13. **SUBJECT:** Automatic expiration of permits.

COMMENTER: Merck & Company, Inc., Virginia Manufacturers' Association

TEXT: We have concerns with the automatic expiration of permits for ' 112(i) sources where the owner has not begun construction or reconstruction within 18 months of permit issuance. This cutoff was apparently borrowed from Virginia's criteria new source review permit programs. We understand one of the primary reasons for such an automatic expiration provision in the PSD regulations is to prevent the holder of a preconstruction permit from "locking up" increment consumption for an indefinite period, thereby possibly excluding others from obtaining PSD permits for new emissions into the same airshed. This concern does not arise in the case of HAP source permitting.

Also, an 18 month cutoff makes some sense in criteria new source review programs because those programs entail case-by-case BACT or LAER determinations which might get "stale" or outdated after 18 months. In the case of ' 112(i) sources, this cannot happen because the control requirement is MACT or other ' 112 standard as promulgated by the EPA. There is essentially no concept that the applicable HAP control technology will become outdated with time. Removing the automatic expiration time could allow the Department to approve the construction or reconstruction of ' 112(i) sources well into the future (with the requirement, of course, that any then-applicable ' 112 standards must be met upon construction and operation of the source.) This "long-look" preconstruction approval could provide considerable flexibility to Virginia businesses, while cutting down on repetitive, routine Article 7 permitting by the Department.

RESPONSE: As discussed in the response to comment 9, the regulation has been revised to apply only to ' 112(g) sources.

14. **SUBJECT:** Tons-per-year trigger.

COMMENTER: Sierra Club

TEXT: Once a source exceeds the 10 tons per year trigger for a major source, all HAPs should be reported even if the cumulative total does not amount to 25 tons per year.

RESPONSE: The 10 tons per year of a single HAP/25 tons per year of total HAPs is established by the Clean Air Act. The commenter fails to offer any evidence that reporting 10 tons per year for any combination of HAP provides a greater health benefit than the existing EPA standard.

No change has been made to the proposal as a result of this comment.

15. **SUBJECT:** Health effects.

COMMENTER: Sierra Club

TEXT: In 9 VAC 5-80-1460 A through C, the applicant should be required to inform the public of the possible human health effects of the HAPs. As the basis for this regulatory program is health concerns, the public has a right to be informed as to the HAPs released and the possible health effects associated with those HAPs.

RESPONSE: The board agrees that the public has a right to be informed of possible human health effects from HAPs, which is why the regulation requires sources to provide such information: 9 VAC 5-80-1460 B 2 requires that the source, in announcing its informational briefing, describe "the applicable pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants" (emphasis ours). Additionally, during the briefing, as required in 9 VAC 5-80-1460 C, "the applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants. . . " (emphasis ours).

No change has been made to the proposal as a result of this comment.

16. **SUBJECT:** Public hearing criteria

COMMENTER: Sierra Club

TEXT: If any of the criteria listed in 9 VAC 5-80-1460 F exist, then a public hearing should be mandatory and not at the discretion of the board.

RESPONSE: The criteria listed in 9 VAC 5-80-1460 F are subjective; it is appropriate for the State Air Pollution Control Board to exercise its statute-granted discretion to evaluate and weigh whether these issues, should they exist, are sufficient to require a hearing. Note that all permit applications must undergo both an informational briefing and a comment period; the

absence of a hearing does not prevent anyone from commenting formally on the application during the comment period. The additional hearing is required only under special circumstances where the board determines that this extra step is necessary. The commenter fails to offer evidence or discussion as to why a public hearing should be mandated in addition to the other mandated public forums.

No change has been made to the proposal as a result of this comment.

17. **SUBJECT:** General permits.

COMMENTER: Sierra Club

TEXT: The reference to general permits in 9 VAC 5-80-1540 A 4 is confusing. Any and all references to general permits should be removed from the rule, as they are not appropriate for construction of major sources of HAPs.

RESPONSE: While improbable, if certain sources of HAP qualify for a general permit, there is no reason why they should not be allowed to seek the general permit as long as they meet general permit requirements. The commenter fails to provide any particular reason why general permits would be inappropriate for large sources of HAP. Note that a general permit requires both the use of a technical advisory group and a public hearing, which is more restrictive than required by this regulation.

General permits are, however, not covered by this particular regulation, and the reference has been removed.

18. **SUBJECT:** Applicability.

COMMENTER: Merck, Virginia Manufacturers Association, U.S. Environmental Protection Agency

TEXT: 9 VAC 5-80-1400 F begins with the phrase, "Unless a MACT standard is promulgated . . .." We don't think this phrase belongs here. If a MACT standard for a source has been promulgated by EPA, the regulation simply would not apply to that source. The new proposal is supposed to apply only to ' 112(g) sources requiring case-by-case MACT determinations. If a MACT standard has been promulgated, the source won't need a case-by-case MACT determination. Therefore, we recommend deleting the phrase.

RESPONSE: This comment is acceptable, and the proposal has been revised accordingly.

19. **SUBJECT:** Definition of affected source.

COMMENTER: Merck, Virginia Manufacturers Association

TEXT: The term "affected source" is defined too narrowly as a source "regulated by a MACT standard." As defined elsewhere in 9 VAC 5-80-1410 C, the term "MACT standard" appears

to include technology-based standards established pursuant to ' 112(d) and perhaps ' 112(h) ("alternative emission standard" as defined by 40 CFR 63.2), but does not appear to include standards promulgated pursuant to ' 112(f) (health-based standards). We recommend use of the term "' 112 standard" instead of "MACT standard" so that it is clear that an affected source is any source for which EPA has promulgated a standard pursuant to '' 112(d), (f), or (h).

We are also concerned about possible confusion generated by the term "regulated by" in the definition. We understand that the intent of the proposal is that it apply only to ' 112(g) sources needing case-by-case MACT determinations. The universe of ' 112(g) sources clearly contrasts with the universe of sources for which EPA has promulgated a standard under '' 112(d), (f), or (h).

To clarify the intended meaning, we recommend the following definition of "affected source":

> "Affected source" means the stationary source, the group of stationary sources, or the portion of a stationary source for which a standard has been promulgated pursuant to ' 112 of the Clean Air Act.

This would comport with EPA's definition of affected source in 40 CFR 63.2.

RESPONSE: The proposal is consistent with EPA's requirements of 40 CFR 63.40(b), which provides that major sources are not covered by the regulation if they are already regulated under a standard issued pursuant to '' 112(d) and (h), and are incorporated in another subpart of Part 63. No mention is made of ' 112(f) sources.

No change has been made to the proposal as a result of this comment.

20. **SUBJECT:** Application information.

COMMENTER: Merck, Virginia Manufacturers Association

TEXT: For permit applications for ' 112(g) sources, the correct citation in 9 VAC 5-80-1440 C 6 is subpart B of 40 CFR Part 63.

RESPONSE: Subpart B is not the correct citation; the correct reference--subpart A--is that cited by EPA at 40 CFR 63.43(e(2)(xiii) and included in the proposal.

No change has been made to the proposal as a result of this comment.

21. **SUBJECT:** Amendment procedures.

COMMENTER: Merck, Virginia Manufacturers Association

TEXT: We are generally concerned about burdensome procedures for amending permits issued pursuant to this article. The limitations on changes that qualify for minor amendment procedures (9 VAC 5-80-1560 A) are extensive. In essence, few changes will qualify for minor permit amendment procedures; the vast majority will have to undergo the extensive and time consuming significant permit amendment procedures. One of the problems with this scheme centers on the lack of de minimis emission exemptions that would allow changes with minimal emissions impacts to be processed as minor permit amendments. We recommend that the board consider ways to establish de minimis emission exemption levels so more source changes may qualify for the simpler minor permit amendment procedures.

RESPONSE: The process for making changes to permits has been designed as a three-tier system in order to accommodate the degree of the significance of the changes: administrative, minor, or significant. Apart from covering a range of potential permit changes, this system is also designed to be consistent with other new source review permitting regulations.

We see no clear relationship between emission levels and the list of changes covered by 9 VAC 5-80-1560 A 1 through 6. The items listed in these subsections generally cover changes to permit conditions that could alter significant provisions on which the permit is based: applicable requirements, the case-by-case MACT determination, and so on. This is an appropriate and equitable means of dealing with such permit changes.

No change has been made to the proposal as a result of this comment.

22. **SUBJECT:** Amendment procedures.

COMMENTER: Merck, Virginia Manufacturers Association

TEXT: 9 VAC 5-80-1560 A 5 specifies that to qualify for the minor permit amendment procedures, proposed changes to a source must be those that "are not modifications under the new source review program." The proposal's definition of "new source review program" includes Virginia's minor new source review program under 9 VAC 5-80-10. Under the minor new source review program, a physical or operational change that results in any increase in emissions from the emissions unit is a "modification." However, the provisions of 9 VAC 5-80-11 exempt such modifications from the minor new source review requirements if the emissions impacts from the change would be below specified exemption levels. To incorporate this exemption approach into 9 VAC 5-80-1560 A 5, we recommend the following wording: "Are not modifications under the new source review program that are exempt pursuant to 9 VAC 5-80-11."

RESPONSE: This comment is acceptable, and appropriate changes reflecting the intent of the comment have been made to the proposal.

23. **SUBJECT:** Subsequently promulgated MACT standards.

COMMENTER: Merck, Virginia Manufacturers Association

TEXT: 9 VAC 5-80-1590 A specifies, in part, that if EPA adopts a MACT standard before the date the applicant receives a permit, "the permit issued pursuant to this article shall contain the promulgated standard rather than any case-by-case MACT determination." However, if EPA promulgates a MACT (or other ' 112 standard) applicable to a stationary source, the source becomes an "affected source" to which the requirements of the proposal do not apply. The source would no longer need a case-by-case MACT determination and, therefore, no longer need a "permit issued pursuant to this article." Instead, the source would need a permit issued pursuant to Virginia's minor new source review regulations revised to include HAP NSR for ' 112(i) sources. To correct this, we recommend that 9 VAC 5-80-1590 A be revised to closely mirror the language in 40 CFR 63.44(a) upon which this subsection is based.

RESPONSE: This comment is acceptable, and appropriate changes reflecting the intent of the comment have been made to the proposal.

24. **SUBJECT:** Definition of "federally enforceable."

COMMENTER: U.S. Environmental Protection Agency

TEXT: Regarding 9 VAC 5-80-1410 5 and 6, any limitation or condition that is part of a permit issued under 40 CFR Part 52.21 or that was approved by EPA in a State Implementation Plan is, by definition, federally enforceable. The language added in these subsections will not preempt the definition of federally enforceable for other programs.

RESPONSE: The language added in these subsections is not intended to "preempt" federal enforceability in general; rather, it is intended to draw attention to the fact that certain limitations and conditions may exist for this program that are enforceable only by the board. Inclusion of this language does not affect federal enforceability for other programs.

No change has been made to the proposal as a result of this comment.

25. **SUBJECT:** Definition of "source category list."

COMMENTER: U.S. Environmental Protection Agency

TEXT: The source category list is an "evergreen" document. Therefore, the reference to the source category list published in the Federal Register on February 12, 1998 may change. This definition of source category list will need to be amended if and when EPA updates this list.

RESPONSE: As EPA recognized in comment 2, Virginia cannot legally include provisions in its regulations that would automatically incorporate federal requirements as enforceable state requirements without deliberate action of the State Air Pollution Control Board. Therefore, this provision can only be revised if EPA updates the list in the Federal Register.

No change has been made to the proposal as a result of this comment.

26. **SUBJECT:** Federal enforceability.

COMMENTER: U.S. Environmental Protection Agency

TEXT: In 9 VAC 5-80-1420 C, any provisions related to the case-by-case MACT determination would be federally enforceable. Any other provision which is incorporated into the permit pursuant to this regulation would be federally enforceable if it was approved by EPA into the Code of Federal Regulations.

RESPONSE: As discussed in the response to comment 24, the language added is intended merely to draw attention to the fact that certain limitations and conditions may exist in a permit issued under this program that are enforceable only by the board. Inclusion of this language does not affect federal enforceability of federal applicable requirements.

No change has been made to the proposal as a result of this comment.

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