

TENTATIVE AGENDA  
STATE AIR POLLUTION CONTROL BOARD MEETING

WEDNESDAY, AUGUST 31, 2022

IN PERSON ONLY – GALLERY, COMMUNITY COLLEGE WORKFORCE ALLIANCE,  
1651 EAST PARHAM ROAD, RICHMOND, VA 23228

Meeting will be Live-Streamed. Go to: [www.deq.virginia.gov](http://www.deq.virginia.gov)  
Any Updates To Details/Final Arrangements To Be Announced On Virginia Regulatory Town Hall

Convene – 10:00 A.M

<b>Agenda Item</b>	<b>Presenter</b>	<b>Tab</b>
<b>Call to Order</b>	<b>Rijal</b>	
<b>Election of Officers</b>	<b>Board Members</b>	
<b>Review and Approve Minutes</b> (April 20, 2022)	<b>Harrell</b>	A
<b>Final Exempt Regulations</b> Regulations for Control of Greenhouse Gases- 9VAC5-145 <i>Exempt Aviation and Aerospace Businesses from HFC Requirements</i>	<b>Sabasteanski</b>	B
Regulations for the Control and Abatement of Air Pollution; Permits for Stationary Sources of Pollutants Subject to Regulation; Regulation for General Administration 9VAC5-80; 9VAC5-85; 9VAC5-170 <i>Revise regulations to implement new requirements for transfer of authority and requests for certain public hearings</i>	<b>Sabasteanski</b>	C
<b>Division Director Report</b>	<b>Dowd</b>	
<b>Report from the Acting Secretary of Natural and Historic Resources</b>	<b>Voyles</b>	
<b>Public Forum</b>		
<b>Future Meetings</b> (to be determined)	<b>Board Members</b>	

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**ADJOURN**

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Rachael Harrell at (804) 801-2932.

PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the

Board has adopted public participation procedures for regulatory action and for case decisions made by the Department of Environmental Quality (Department). These procedures establish the times for the public to provide appropriate comment to the Board for regulatory action and the Department for case decisions for consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (e.g., issuance and amendment of permits and enforcement orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. (Note: as of July 1, 2022, the Department takes final action on all case decisions.) As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held, usually 45 days.

In light of these established procedures, the Board accepts public comment on regulatory actions as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Also, public comment will be accepted for certain final exempt actions where there has been no public comment period. Persons are allowed up to 3 minutes to address the Board on the emergency regulation and final exempt actions under consideration.

**POOLING MINUTES ON REGULATORY ACTIONS:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

**NEW INFORMATION ON A REGULATORY ACTION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. Should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda or pending regulatory actions.

Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less. Note, there is no pooling of minutes during the public forum.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Rachael Harrell, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 801-2932, e-mail: [rachael.harrell@deq.virginia.gov](mailto:rachael.harrell@deq.virginia.gov) .

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**Additional Meeting Information:**

- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the Community College Workforce Alliance, its employees and guests.
- All violators are subject to removal.

**COMMONWEALTH OF VIRGINIA  
STATE AIR POLLUTION CONTROL BOARD MEETING**

**August 31, 2022**

**SUBJECT:** Exempt Aviation and Aerospace Businesses from HFC Requirements (9VAC5-145, Rev. E22) - Request for Board Action on Exempt Final Regulation

**CONTACT:** Karen G. Sabasteanski  
karen.sabasteanski@deq.virginia.gov/804-659-1973  
Policy Analyst, Office of Air Data Analysis and Planning  
Department of Environmental Quality

**INTRODUCTION**

The 2022 Virginia State Budget includes a provision that directs the State Air Pollution Control Board to modify its final regulation prohibiting the use of certain hydrofluorocarbons to exempt such use in the manufacturing processes of aviation and aerospace businesses located in Virginia. Chapter 145 must now be modified accordingly. A minor correction to the definition of "new" is also being made.

The department is requesting approval of final regulation amendments that meet these state statutory requirements. Approval of the regulation amendments will ensure that the Commonwealth will be able to meet its obligations under the requirements of the 2022 Acts of Assembly.

**REGULATORY ACTION ADOPTION PROCESS**

This state regulation is necessary to conform to the 2022 Acts of Assembly, Virginia State Budget. Item 379 #1c D specifies that the State Air Pollution Control Board shall make modifications to its final regulation prohibiting the use of certain hydrofluorocarbons such that these regulations shall not prohibit the use of hydrofluorocarbons in the manufacturing process by aviation and aerospace businesses located in Virginia to produce products for sale and distribution. Additionally, the definition of "new" was improperly drafted in the original; this definition is now being corrected in order that the cross-references are accurate, which in turn will enable the regulation to operate correctly. This correction is exempt from the state administrative procedures for adoption of regulations contained in the Administrative Process Act by § 2.2-4006 because it is only the correction of a technical error. Notice of the regulation amendment adoption and the effective date will be published in the Virginia Register after Board adoption.

Notice that the regulation amendments would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the

board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

### **SUMMARY OF AMENDMENTS TO REGULATION**

Below is a brief summary of the substantive provisions the department is recommending be adopted.

1. The applicability section is amended to add an exemption for the use of hydrofluorocarbons in the manufacturing processes of aviation and aerospace businesses located in Virginia.
2. The definition of "new" is amended to correctly cite the applicable federal regulations.

### **SUPPORTING DOCUMENTATION**

1. Item 379 #1c D of the 2022 Virginia State Budget.
2. The agency background document. This document does not include the statement from the Attorney General's Office, which is issued after the board meeting.
3. The draft final regulation amendments.

### **DEPARTMENT RECOMMENDATION**

1. It is recommended that the board adopt the attached proposal, with an effective date consistent with the Administrative Process Act

TEMPLATES\EXEMPT\ER09  
REG\DEV\E22-07BF

2022 Special Session I

[Budget Amendments - HB30 \(Conference Report\)](#)

[Bill Order](#) » Item 379 #1c

## **Hydrofluorocarbon Regulations (language only)**

Item 379 #1c

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### **Natural and Historic Resources**

Department of Environmental Quality

Page 411, after line 43, insert:

"D. The State Air Pollution Control Board shall make modifications to its final regulation prohibiting the use of certain hydrofluorocarbons such that these regulations shall not prohibit the use of hydrofluorocarbons in the manufacturing process by aviation and aerospace businesses located in Virginia to produce products for sale and distribution."

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### **Explanation**

(This amendment directs the State Air Pollution Control Board to modify its final regulation prohibiting the use of certain hydrofluorocarbons to exempt such use in the manufacturing processes of aviation and aerospace businesses located in Virginia.)



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC5-145
<b>VAC Chapter title(s)</b>	Regulations for Control of Greenhouse Gases
<b>Action title</b>	Exempt Aviation and Aerospace Businesses from HFC Requirements (Rev. E22)
<b>Final agency action date</b>	
<b>Date this document prepared</b>	

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Item 379 #1c D of the 2022 Virginia State Budget directs the State Air Pollution Control Board to modify its final regulation prohibiting the use of certain hydrofluorocarbons to exempt such use in the manufacturing processes of aviation and aerospace businesses located in Virginia. Chapter 145 must now be modified accordingly. A minor technical correction to the definition of "new" is also being made.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined*

*in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The mandate for the regulatory change exempting manufacturing processes of aviation and aerospace businesses is the 2022 Virginia State Budget. The definition of "new" was improperly drafted in the original; the definition is now being corrected in order that the cross-references are accurate, which in turn will enable the regulation to operate correctly.

**Acronyms and Definitions**

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

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VAC - Virginia Administrative Code

**Statement of Final Agency Action**

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On August 31, 2022, the State Air Pollution Control Board took final action to amend the Regulation for Control of Greenhouse Gases (9VAC5-145). The regulatory action is to be effective consistent with the Administrative Process Act.

The regulation amendment to the applicability section is exempt from the state administrative procedures for adoption of regulations contained in the Administrative Process Act by the provisions of the 2022 Virginia State Budget. The correction to the term "new" is exempt from the state administrative procedures for adoption of regulations contained in the Administrative Process Act by § 2.2-4006 A 3 because it is only the correction of a technical error.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.



REGULATIONS FOR CONTROL OF GREENHOUSE GASES (9VAC5-145)

**Exempt Aviation and Aerospace Businesses from HFC Requirements (Rev. E22)**

**9VAC5-145-100. Applicability, prohibitions, and exemptions.**

A. The sale, lease, rent, installation, or entry into commerce in the Commonwealth of Virginia by any person of any products or equipment that use or will use hydrofluorocarbons for the applications and end-uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017, is prohibited after the effective date specified in 9VAC5-145-120.

B. Except where an existing system is retrofitted, nothing in this chapter requires a person that acquired prior to the effective date of the restrictions specified in 9VAC5-145-120, a product or equipment containing a substance prohibited under this chapter, to cease use of that product or equipment.

C. The prohibitions of this chapter do not apply to products or equipment in specific applications and end-uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017, that were manufactured prior to the effective date of the restrictions specified in 9VAC5-145-120.

D. Notwithstanding subsection A of this section, the uses of hydrofluorocarbons specified in subdivisions ~~1 and 2~~ 1, 2 and 3 of this subsection are exempt from the prohibitions for the applications and end-uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017.

1. This chapter does not restrict the use of hydrofluorocarbons in the manufacturing process by extruded polystyrene boardstock and billet manufacturers located in the Commonwealth of Virginia to produce products for sale and distribution outside of the Commonwealth, as long as the manufacturer and the distributors of that product can demonstrate (i) that the extruded polystyrene boardstock or billet product is intended for distribution and sale, lease, rental, installation, or entry into commerce outside of the Commonwealth of Virginia and (ii) that the manufacturer and distributors have taken reasonable precautions to assure that the extruded polystyrene boardstock or billet product is not distributed within the Commonwealth for sale, lease, rental, installation, or entry into commerce. This exemption does not apply to extruded polystyrene boardstock or billet products that are sold, leased, rented, installed, or otherwise entered into commerce by any person to retail outlets within the Commonwealth. This exemption shall expire on the date specified in 9VAC5-145-130 B.

2. This chapter does not restrict the use of hydrofluorocarbons in the manufacturing process by aviation and aerospace businesses located in Virginia to produce products for sale and distribution.

3. This chapter does not restrict the management or use of a regulated substance for which the Administrator of the U. S. Environmental Protection Agency has provided a mandatory allocation of allowances pursuant to Section 103 (e)(4)(B)(iv)(I) of the American Innovation and Manufacturing Act of 2020 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (H.R. 133 (116th)) for the exclusive use in applications solely for:

- a. A propellant in metered dose inhalers;
- b. Defense sprays;
- c. Structural composite preformed polyurethane foam for marine use and trailer use;
- d. The etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector;

REGULATIONS FOR CONTROL OF GREENHOUSE GASES (9VAC5-145)

e. Mission-critical military end-uses, such as armored vehicle engine and shipyard fire suppression systems and systems used in deployable and expeditionary applications; and

f. Onboard aerospace fire suppression.

~~3.~~ 4. The exemption in subdivision 2 of this subsection shall expire on December 28, 2025, or in the event the Administrator of the U.S. Environmental Protection Agency has extended providing the allocation of allowances for certain essential uses pursuant to Section 103 (e)(4)(B)(v)(II) of the American Innovation and Manufacturing Act of 2020 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (H.R. 133 (116th)) to the date that extension ends, whichever is later.

E. The provisions of this chapter apply throughout the Commonwealth of Virginia.

**9VAC5-145-110. Definitions.**

A. For the purpose of applying this chapter and the prohibitions on hydrofluorocarbons for the applications and end-uses restricted by Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this chapter, all terms not defined in this section shall have the meanings given them in 9VAC5-10, General Definitions, unless otherwise required by context.

C. Terms defined.

"Aerosol propellant" means a liquefied or compressed gas, used in whole or in part, such as a cosolvent, to expel a liquid or other material from the same self-pressurized container or from a separate container.

"Air conditioning equipment" means chillers, both centrifugal chillers and positive displacement chillers, intended for comfort cooling of occupied spaces.

"Application" means a specific use within a major industrial sector end-use.

"Bunstock" means a large solid block-like structure formed during the production of polyurethane, polyisocyanurate, phenolic, or polystyrene insulation.

"Capital cost" means an expense incurred in the production of goods or in rendering services, including the cost of engineering, purchase, and installation of components or systems, and instrumentation; and contractor and construction fees.

"Centrifugal chiller" means air conditioning equipment that utilizes a centrifugal compressor in a vapor-compression refrigeration cycle typically used for commercial comfort air conditioning, but not for cooling for industrial process cooling and refrigeration.

"Class I substance" means any ozone-depleting compound defined in the Clean Air Act, 42 USC § 7671(3).

"Class II substance" means any ozone-depleting compound defined in the Clean Air Act, 42 USC § 7671(4).

"Cold storage warehouse" means a cooled facility designed to store meat, produce, dairy products, and other products delivered to other locations for sale to the ultimate consumer.

"Component" means a part of a refrigeration system, including condensing units, compressors, condensers, evaporators, and receivers, and all of its connections and subassemblies, without which the refrigeration system will not properly function or will be subject to failures.

"Cumulatively replaced" means the addition of or change in multiple components within a three-year period.

REGULATIONS FOR CONTROL OF GREENHOUSE GASES (9VAC5-145)

"Effective date" means the date after which new or retrofit equipment or products are prohibited, where applicable.

"End-use" means processes or classes of specific applications within industry sectors listed in Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017.

"Flexible polyurethane" means a nonrigid synthetic foam containing polymers created by the reaction of isocyanate and polyol, including that used in furniture, bedding, and chair cushions.

"Foam" means a product with a cellular structure formed via a foaming process in a variety of materials that undergo hardening via a chemical reaction or phase transition.

"Foam blowing agent" means substance that functions as a source of gas to generate bubbles or cells in the mixture during the formation of foam.

"Foam system" means a multipart liquid material that expands when mixed to form a solid or flexible substance in which thin films of material separate pockets of gas.

"Greenhouse gases" means, for the purposes of this chapter, the aggregate group of the following gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Household refrigerators and freezers" means refrigerators, refrigerator-freezers, freezers, and miscellaneous household refrigeration appliances intended for residential use. For the purposes of this chapter, the definition of household refrigerators and freezers does not include household refrigerators and freezers - compact or household refrigerators and freezers - built-in.

"Household refrigerators and freezers - built-in" means refrigerators, refrigerator-freezers, and freezers intended for residential use with 7.75 cubic feet or greater total volume and 24 inches or less depth not including doors, handles, and custom front panels; with sides that are not finished and not designed to be visible after installation; and designed, intended, and marketed exclusively to be installed totally encased by cabinetry or panels that are attached during installation and securely fastened to adjacent cabinetry, walls, or floor and equipped with an integral factory-finished face or to accept a custom front panel.

"Household refrigerators and freezers - compact" means refrigerators, refrigerator-freezers, and freezers intended for residential use with a total refrigerated volume of less than 7.75 cubic feet (220 liters).

"Hydrofluorocarbon" or "HFC" means a class of greenhouse gases that are saturated organic compounds containing hydrogen, fluorine, and carbon.

"Integral skin polyurethane" means a synthetic self-skinning foam containing polyurethane polymers formed by the reaction of an isocyanate and a polyol, including those used in car steering wheels and dashboards.

"Manufacturer" means a person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces any product that contains or uses hydrofluorocarbons or is an importer or domestic distributor of such a product.

"Metered dose inhaler" or "MDI" means a device that delivers a measured amount of medication as a mist that a patient can inhale, typically used for bronchodilation to treat symptoms of asthma, chronic obstructive pulmonary disease (COPD), chronic bronchitis, emphysema, and other respiratory illnesses. A MDI consists of a pressurized canister of medication in a case with a mouthpiece.

"Mixture" means a blend of two or more compounds.

REGULATIONS FOR CONTROL OF GREENHOUSE GASES (9VAC5-145)

"New" means:

1. Products or equipment that are manufactured after ~~June 1, 2021~~ the effective date of the prohibitions in Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017 or January 1, 2022 for dates before the effective date of this chapter;
2. Products or equipment that are first installed for an intended purpose with new or used components;
3. Products or equipment that are expanded by the addition of components to increase system capacity after ~~June 1, 2021~~ the effective date of the prohibitions; or
4. Products or equipment replaced or cumulatively replaced such that the cumulative capital cost after ~~June 1, 2021~~ the effective date of the prohibitions, of replacement exceeds 50% of the capital cost of replacing the whole system.

"Phenolic insulation board" means boards, blocks or other shapes fabricated with phenolic foam.

"Polyolefin" means the foam sheets and tubes made of polyolefin, a macromolecule formed by the polymerization of olefin monomer units.

"Polystyrene extruded boardstock and billet" means a foam formed from predominantly styrene monomer and produced on extruding machines in the form of continuous foam slabs that can be cut and shaped into panels and used for roofing, walls, flooring, and pipes.

"Polystyrene extruded sheet" means polystyrene foam, including that used for packaging, buoyancy or floatation and food-service items such as hinged polystyrene containers (for take-out from restaurants), food trays (meat and poultry) plates, bowls, and retail egg containers.

"Polyurethane" means a polymer formed principally by the reaction of an isocyanate and a polyol, including polyisocyanurate (polyiso).

"Positive displacement chiller" means vapor compression cycle chillers that use positive displacement compressors and are typically used for commercial comfort air conditioning. For the purpose of this chapter, positive displacement chiller does not include cooling for industrial process cooling and refrigeration.

"Refrigerant" or "refrigerant gas" means any substance, including blends and mixtures, that is used for heat transfer purposes.

"Refrigerated food processing and dispensing equipment" means retail food refrigeration equipment that is designed to process and dispense food and beverages that are intended for immediate or near-immediate consumption, including chilled and frozen beverages, ice cream, and whipped cream. This end-use excludes water coolers and units designed solely to cool and dispense water.

"Refrigeration equipment" means any stationary device that is designed to contain and use refrigerant gas to establish or maintain colder than ambient temperatures in a confined space, including retail or commercial refrigeration equipment, household refrigerators and freezers, and cold storage warehouses.

"Remote condensing units" means retail refrigeration equipment or units that have a central condensing portion and may consist of one or more compressors, condensers, and receivers assembled into a single unit, which may be located external to the sales area. The condensing portion and often other parts of the system are located outside the space or area cooled by the evaporator. Remote condensing units are commonly installed

REGULATIONS FOR CONTROL OF GREENHOUSE GASES (9VAC5-145)

in convenience stores, specialty shops (e.g., bakeries, butcher shops), supermarkets, restaurants, and other locations where food is stored, served, or sold.

"Residential use" means use by a private individual of a substance, or a product containing the substance, in or around a permanent or temporary household, during recreation, or for any personal use or enjoyment. Use within a household for commercial or medical applications is not residential use, nor is use in automobiles, watercraft, or aircraft.

"Retail food refrigeration" or "commercial refrigeration" means equipment designed to store and display chilled or frozen goods for commercial sale, including stand-alone units, refrigerated food processing and dispensing equipment, remote condensing units, supermarket systems, and vending machines.

"Retrofit" means the replacement of the refrigerant used in refrigeration equipment with a different refrigerant and any related changes to the refrigeration equipment required to maintain its operation and reliability following refrigerant replacement.

"Rigid polyurethane and polyisocyanurate laminated boardstock" means laminated board insulation made with polyurethane or polyisocyanurate foam, including that used for roofing and walls but not including rigid polyurethane appliance foam, rigid polyurethane commercial refrigeration and sandwich panels, rigid polyurethane marine flotation foam, rigid polyurethane spray foam, and rigid polyurethane one-component foam sealants.

"Rigid polyurethane appliance foam" means polyurethane insulation foam in household appliances.

"Rigid polyurethane commercial refrigeration and sandwich panels" means polyurethane foam used to provide insulation in walls and doors, including that used for commercial refrigeration equipment, and used in doors, including garage doors.

"Rigid polyurethane high-pressure two-component spray foam" means a liquid polyurethane foam system sold as two parts (i.e., A-side and B-side) in nonpressurized containers that is field or factory applied in situ using high-pressure proportioning pumps at 800 to 1,600 pounds per square inch (psi) and an application gun to mix and dispense the chemical components.

"Rigid polyurethane low-pressure two-component spray foam" means a liquid polyurethane foam system sold as two parts (i.e., A-side and B-side) in containers that are pressurized to less than 250 psi during manufacture of the system for application without pumps and are typically applied in situ relying upon a liquid blowing agent or gaseous foam blowing agent that also serves as a propellant.

"Rigid polyurethane marine flotation foam" means buoyancy or flotation polyurethane foam used in boat and ship manufacturing for both structural and flotation purposes.

"Rigid polyurethane one-component foam" means a polyurethane foam generally packaged in aerosol cans that is applied in situ using a gaseous foam blowing agent that is also the propellant for the aerosol formulation.

"Rigid polyurethane slabstock and other" means a rigid closed-cell polyurethane foam formed into slabstock insulation for panels and fabricated shapes for pipes and vessels.

"Stand-alone low-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures at or below 32°F (0°C).

"Stand-alone medium-temperature unit" means a stand-alone unit that maintains food or beverages at temperatures above 32°F (0°C).

"Stand-alone unit" means retail refrigerators, freezers, and reach-in coolers (either open or with doors) where all refrigeration components are integrated and the refrigeration

REGULATIONS FOR CONTROL OF GREENHOUSE GASES (9VAC5-145)

circuit may be entirely brazed or welded. These systems are charged with refrigerant at the factory and typically require only an electricity supply to begin operation.

"Substance" means any chemical, product substitute, or alternative manufacturing process, whether new or retrofit, intended for use in the end-uses listed in Appendix U and Appendix V of Subpart G of 40 CFR Part 82, as those read on January 3, 2017.

"Substitute" means a chemical, product replacement, or alternative manufacturing process, whether new or retrofit, that is used to perform a function previously performed by a class I substance or class II substance.

"Supermarket systems" means multiplex or centralized retail food refrigeration equipment systems designed to cool or refrigerate, which typically operate with racks of compressors installed in a machinery room and which includes both direct and indirect systems.

"Use" means any utilization of any substance, including utilization in a manufacturing process or product in the Commonwealth of Virginia, consumption by the end-user in the Commonwealth, or in intermediate applications in the Commonwealth, such as formulation or packaging for other subsequent applications. For the purposes of this chapter, use excludes residential use, but it does not exclude manufacturing for the purpose of residential use.

"Vending machine" means a self-contained unit that dispenses goods that must be kept cold or frozen.

**COMMONWEALTH OF VIRGINIA  
STATE AIR POLLUTION CONTROL BOARD MEETING**

**August 31, 2022**

**SUBJECT:** Permits for Stationary Sources, Transfer of Authority and Requests for Certain Public Hearings (9VAC5-80, -85 and -170, Rev. E20) - Request for Board Action on Exempt Final Regulation Amendments

**CONTACT:** Karen G. Sabasteanski  
karen.sabasteanski@deq.virginia.gov/804-659-1973  
Policy Analyst, Office of Air Data Analysis and Planning  
Department of Environmental Quality

**INTRODUCTION**

Chapter 356 of the 2022 Acts of Assembly limits the authority of the State Air Pollution Control Board to issuance of regulations, and transfers the board's existing authority to issue permits, orders, and variances to the Department of Environmental Quality (DEQ). Procedures for public comment on pending controversial permits and on regulatory changes necessary to implement the legislation are established.

The department is requesting approval of draft final regulation amendments that meet a directive of the General Assembly: Chapter 356 of the 2022 Acts of Assembly, modifying the Virginia Air Pollution Control Law (§ 10.1-1300 et seq.). A number of technical corrections are also being made. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under state law.

**REGULATORY ACTION ADOPTION PROCESS**

The regulation amendments that are necessary to conform to Virginia statutory law are exempt from the standard regulatory adoption process (Article 2 of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act. The regulation amendments that are technical corrections are exempt from Article 2 by the provisions of § 2.2-4006 A 3 of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date.

Also, the Registrar must agree that the regulation amendments are necessary to conform to Virginia statutory law and therefore exempt from the standard regulatory adoption process, and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. Further, in adopting the regulation amendments under § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Notice that the regulation would be considered by the board and that public comment would be accepted at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

### **SUMMARY OF PROPOSED AMENDMENTS**

1. Part I of 9VAC5-80 is amended to reflect the transfer of the board's existing authority to issue permits and orders to DEQ in accordance with Chapter 356, including replacing "board" with "department," and adding new procedures for "controversial" permits.
2. Articles 1 and 3 through 10 of Part II of 9VAC5-80) are amended such they comport with the requirements of Chapter 356, including new language under "action on permit application" sections in order to address the requirement that department provide a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached.
3. Permits for Stationary Sources of Pollutants Subject to Regulation (9VAC5-85) is amended in order to comport with the requirements of Chapter 356, primarily the replacement of "board" with "department."
4. The Regulation for General Administration (9VAC5-170) is amended to reflect the transfer of the board's existing authority to issue permits and orders to DEQ in accordance with Chapter 356.

### **SUPPORTING DOCUMENTATION**

1. Chapter 356 of the 2022 Acts of Assembly.
2. The agency background document.
3. The draft final regulation amendments.

### **DEPARTMENT RECOMMENDATION**

1. It is recommended that the board adopt the attached proposal, with an effective date as provided in the Administrative Process Act.
2. In adopting this proposal, the board should affirm that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

TEMPLATES\EXEMPT\ER09-NMD  
REG\DEV\22-07BF



# VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION

## CHAPTER 356

*An Act to amend and reenact §§ 3.2-401, 10.1-1186.3, 10.1-1306 through 10.1-1307.02, 10.1-1307.04, 10.1-1308.1 through 10.1-1314, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1333, 15.2-2403.3, as it may become effective, 15.2-5101, 28.2-1205.1, 46.2-1601, 62.1-44.3, as it is currently effective and as it may become effective, 62.1-44.14, 62.1-44.15:81, 62.1-44.15:83, 62.1-104, 62.1-242, and 62.1-255 of the Code of Virginia; to amend the Code of Virginia by adding in Article 1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.6:1 and by adding sections numbered 62.1-248.2 and 62.1-263.1; and to repeal §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia, relating to Air Pollution Control Board and State Water Control Board; authority of Department of Environmental Quality.*

[S 657]

Approved April 11, 2022

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.2-401, 10.1-1186.3, 10.1-1306 through 10.1-1307.02, 10.1-1307.04, 10.1-1308.1 through 10.1-1314, 10.1-1315, 10.1-1316, 10.1-1318, 10.1-1320, 10.1-1320.1, 10.1-1322, 10.1-1322.4, 10.1-1333, 15.2-2403.3, as it may become effective, 15.2-5101, 28.2-1205.1, 46.2-1601, 62.1-44.3, as it is currently effective and as it may become effective, 62.1-44.14, 62.1-44.15:81, 62.1-44.15:83, 62.1-104, 62.1-242, and 62.1-255 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.6:1 and by adding sections numbered 62.1-248.2 and 62.1-263.1 as follows:**

**§ 3.2-401. Exclusions from chapter.**

This chapter shall not apply to any agricultural activity to which: (i) Article 12 (§ 10.1-1181.1 et seq.) of Chapter 11 of Title 10.1; or (ii) a *water-related* permit issued by the ~~State Water Control Board~~, *Department of Environmental Quality* applies.

**§ 10.1-1186.3. Additional powers of Boards and the Department; mediation; alternative dispute resolution.**

A. The State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board, in their discretion, *or the Director, in his discretion*, may employ mediation as defined in § 8.01-581.21, or a dispute resolution proceeding as defined in § 8.01-576.4, in appropriate cases to resolve underlying issues, reach a consensus, or compromise on contested issues. An "appropriate case" means any process related to the development of a regulation *by the Board* or the issuance of a permit *by the Department* in which it is apparent that there are significant issues of disagreement among interested persons and for which the Board *or the Department* finds that the use of a mediation or dispute resolution proceeding is in the public interest. The Boards *or the Department* shall consider not using a mediation or dispute resolution proceeding if:

1. A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

2. The matter involves or may bear upon significant questions of state policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the ~~Board~~ *Department*;

3. Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

4. The matter significantly affects persons or organizations who are not parties to the proceeding;

5. A full public record of the proceeding is important, and a mediation or dispute resolution proceeding cannot provide such a record; and

6. The Board *or the Department* must maintain continuing jurisdiction over the matter with the authority to alter the disposition of the matter in light of changed circumstances, and a mediation or dispute resolution proceeding would interfere with the *Department or the Board's* fulfilling that requirement.

Mediation and alternative dispute resolution as authorized by this section are voluntary procedures which supplement rather than limit other dispute resolution techniques available to the Boards *or the Department*. Mediation or a dispute resolution proceeding may be employed in the issuance of a permit only with the consent and participation of the permit applicant and shall be terminated at the request of the permit applicant.

B. The decision to employ mediation or a dispute resolution proceeding is in a Board's *or the Department's* sole discretion and is not subject to judicial review.

C. The outcome of any mediation or dispute resolution proceeding shall not be binding upon a Board

or the Department, but may be considered by a Board the Department in issuing a permit or by a Board in promulgating a regulation.

D. Each Board and the Department shall adopt rules and regulations, in accordance with the Administrative Process Act, for the implementation of this section. Such rules and regulations shall include: (i) standards and procedures for the conduct of mediation and dispute resolution, including an opportunity for interested persons identified by the Board Department to participate in the proceeding; (ii) the appointment and function of a neutral, as defined in § 8.01-576.4, to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work product or other materials.

E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where the Department or a Board uses or relies on information obtained in the course of such proceeding in issuing a permit or promulgating a regulation, respectively.

Nothing in this section shall create or alter any right, action or cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), with applicable federal law or with any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

**§ 10.1-1306. Inspections, investigations, etc.**

The Board Department shall make, or cause to be made, such investigations and inspections and do such other things as are reasonably necessary to carry out the provisions of this chapter, within the limits of the appropriations, study grants, funds, or personnel which are available for the purposes of this chapter, including the achievement and maintenance of such levels of air quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property and which will foster the comfort and convenience of the people of the Commonwealth and their enjoyment of life and property and which will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attractions.

**§ 10.1-1307. Further powers and duties of Board and Department.**

A. The Board shall have the power to control and regulate its internal affairs; *The Department shall have the power to* initiate and supervise research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the United States and all agencies of the Commonwealth, political subdivisions, private industries, and any other affected groups in furtherance of the purposes of this chapter.

B. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in § 10.1-1307.05 and Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.

C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, ~~it~~ *the Department* may ~~in its discretion~~ grant local variances therefrom, if it finds after an investigation and hearing that local conditions warrant; *except that no local variances shall be granted from regulations adopted by the Board pursuant to § 10.1-1308 related to the requirements of subsection E of §10.1-1308 or Article 4 (§ 10.1-1329 et seq.).* If local variances are permitted, the Board Department shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the Board Department, after a hearing, determines that the amendment or revocation is warranted. Variances and amendments to variances shall be adopted only after a public hearing has been conducted pursuant to the public advertisement of the subject, date, time, and place of the hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

D. After the Board has adopted the regulations provided for in § 10.1-1308, ~~it~~ *the Department* shall have the power to: (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce ~~its~~ *the Board's* regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the enforcement of ~~its~~ orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.

E. The Board in making regulations ~~and~~; *the Department* in approving variances, control programs, or permits; and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located, *except that consideration of this factor shall be satisfied if the local governing body of a locality in which a facility or activity is*

*proposed has resolved that the location and operation of the proposed facility or activity is suitable to the area in which it is located; and*

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

F. ~~The Board may designate one of its members, the Director, or a staff assistant to Department shall~~ conduct the hearings provided for in this chapter. ~~A record of the hearing shall be made and furnished to the Board for its use in arriving at its decision.~~

G. The Board shall not:

1. Adopt any regulation limiting emissions from wood heaters; or  
2. Enforce against a manufacturer, distributor, or consumer any federal regulation limiting emissions from wood heaters adopted after May 1, 2014.

H. ~~The Board~~ *Department* shall submit an annual report to the Governor and General Assembly on or before October 1 of each year on matters relating to the Commonwealth's air pollution control policies and on the status of the Commonwealth's air quality.

*I. In granting a permit pursuant to this section, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit, pursuant to this section, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.*

**§ 10.1-1307.01. Further duties of Board and Department; localities particularly affected.**

A. ~~Before The Board, before~~ promulgating a regulation under consideration, ~~or the Department, before~~ granting a variance to an existing regulation, or issuing a permit for the construction of a new major source or for a major modification to an existing source, ~~if the Board finds it is found~~ that there is a locality particularly affected by the regulation, variance, or permit, ~~the Board shall, respectively:~~

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in each locality affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall provide information regarding specific pollutants and the total quantity of each that may be emitted and shall list the type and quantity of any fuels to be used.

2. Mail the notice to the chief elected official and chief administrative officer of and the planning district commission for such locality.

Written comments shall be accepted by the Board for at least 15 days after any hearing on the regulation, ~~variance, or permit,~~ unless the Board votes to shorten the period. *Written comments shall be accepted by the Department for at least 15 days after any hearing on the variance or permit.*

B. ~~Before~~ *If the Department finds, before* granting any variance to an existing regulation or issuing any permit for (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas, ~~if the Board finds that there is a locality particularly affected by such variance or permit, the Board~~ *Department* shall:

1. Require the applicant to publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request Board consideration or as to the date and location of a public hearing;~~ and (v) advise the public where to obtain information regarding the proposed action. The Department shall post such notice on the Department website and on a Department social media account.

2. Require the applicant to mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality.

Written comments shall be accepted by the ~~Board~~ *Department* for at least 30 days after any hearing on such variance or permit, unless the ~~Board votes~~ *Director elects* to shorten the period.

C. For the purposes of this section, the term "locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

**§ 10.1-1307.02. Permit for generation of electricity during ISO-declared emergency.**

A. As used in this section:

"Emergency generation source" means a stationary internal combustion engine that operates according

to the procedures in the ISO's emergency operations manual during an ISO-declared emergency.

"ISO-declared emergency" means a condition that exists when the independent system operator, as defined in § 56-576, notifies electric utilities that an emergency exists or may occur and that complies with the definition of "emergency" adopted by the Board pursuant to subsection B.

"Retail customer" has the same meaning ascribed thereto in § 56-576.

B. The Board shall adopt a general permit ~~or permits regulation~~ for the use of back-up generation to authorize the construction, installation, reconstruction, modification, and operation of emergency generation sources during ISO-declared emergencies. Such general permit ~~or permits regulation~~ shall include a definition of "emergency" that is compatible with the ISO's emergency operations manual. After adoption of such general permit ~~or permits regulation~~, any amendments to the Board's regulations necessary to carry out the provisions of this section shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

**§ 10.1-1307.04. Greenhouse gas emissions inventory.**

A. The Department shall conduct a comprehensive statewide baseline and projection inventory of all greenhouse gas (GHG) emissions and shall update such inventory every four years. The Board may adopt regulations necessary to collect from all source sectors data needed by the Department to conduct, update, and maintain such inventory.

B. The ~~Board~~ Department shall include the inventory in the report required pursuant to subsection H of § 10.1-1307, beginning with the report issued prior to October 1, 2022, and every four years thereafter. The Department shall publish such inventory on its website, showing changes in GHG emissions relative to an estimated GHG emissions baseline case for calendar year 2010.

C. Any information, except emissions data, that is reported to or otherwise obtained by the Department pursuant to this section and that contains or might reveal proprietary information shall be confidential and shall be exempt from the mandatory disclosure requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Each owner shall notify the Director or his representative of the existence of proprietary information if he desires the protection provided pursuant to this subsection.

**§ 10.1-1308.1. Streamlined permitting process for qualified energy generators.**

A. As used in this section:

"Biomass" means organic material that is available on a renewable or recurring basis, including:

1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;
2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;
3. Animal waste, including manure and slaughterhouse and other processing waste;
4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;
5. Crops and trees planted for the purpose of being used to produce energy;
6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and
7. Municipal solid waste, excluding tires and medical and hazardous waste.

"Expedited process" means a process that (i) requires the applicant to pay fees to the Commonwealth in connection with the issuance and processing of the permit application that do not exceed \$50 and (ii) has a duration, from receipt of a complete permit application until final action by the ~~Board~~ Department on the application, not longer than 60 days.

"Qualified energy generator" means a commercial facility located in the Commonwealth with the capacity annually to generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product, that is generated or produced from biomass, and that is sold to an unrelated person or used in a manufacturing process.

B. The ~~Board~~ Department shall develop an expedited process for issuing any permit that the ~~Board~~ it is required to issue for the construction or operation of a qualified energy generator. The development of the expedited permitting process shall be in accordance with subdivision A 8 of § 2.2-4006; however, if the construction or operation of a qualified energy generator is subject to a major new source review program required by § 110(a)(2)(C) of the federal Clean Air Act, this section shall not apply.

**§ 10.1-1309. Issuance of special orders; civil penalties.**

A. The ~~Board~~ Department shall have the power to issue special orders to:

- (i) owners who are permitting or causing air pollution as defined by § 10.1-1300, to cease and desist from such pollution;
- (ii) owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to and approved by the ~~Board~~ Department, to construct such facilities in accordance with or otherwise comply with, such approved plans;
- (iii) owners who have violated or failed to comply with the terms and provisions of any ~~Board~~

*Department* order or directive to comply with such terms and provisions;

(iv) owners who have contravened duly adopted and promulgated air quality standards and policies, to cease such contravention and to comply with air quality standards and policies;

(v) require any owner to comply with the provisions of this chapter and any ~~Board~~ *Department* decision; and

(vi) require any person to pay civil penalties of up to \$32,500 for each violation, not to exceed \$100,000 per order, if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by ~~the Board~~ or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subsection B. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The ~~Board~~ *Department* shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination.

B. Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection C below. Should the ~~Board~~ *Department* find that any such owner is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, after a reasonable attempt to give notice, it shall declare a state of emergency and may issue without hearing an emergency special order directing the owner to cease such pollution immediately, and shall within 10 days hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If the ~~Board~~ *Department* finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, it may proceed in accordance with § 10.1-1316 or 10.1-1320.

C. Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal delivery by an agent of the ~~Board~~ *Department*, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section or in § 10.1-1307 shall limit the ~~Board's~~ *Department's* authority to proceed against such owner directly under § 10.1-1316 or 10.1-1320 without the prior issuance of an order, special or otherwise.

#### **§ 10.1-1309.1. Special orders; penalties.**

The ~~Board~~ *Department* is authorized to issue special orders in compliance with the Administrative Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the ~~Board~~ *Department* a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Department, submission of a bond, corporate guarantee based on audited financial statements, or such other instruments as the ~~Board~~ *Department* may deem appropriate. The ~~Board~~ *Department* may require that such plan and instruments be updated as appropriate. The ~~Board~~ *Department* shall give due consideration to any plan submitted by the owner in accordance with §§ 10.1-1410, 10.1-1428, and 62.1-44.15:1.1, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a source which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the source. The term shall not include the sale or transfer of a source in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

**§ 10.1-1310. Decision of Department pursuant to hearing.**

Any decision by the ~~Board~~ *Department* rendered pursuant to hearings under § 10.1-1309 shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the ~~Board's~~ *Department's* decision is based. Certified copies of the written decision shall be delivered or mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this section shall render such decision invalid.

**§ 10.1-1310.1. Notification of local government.**

Upon determining that there has been a violation of this chapter or any regulation promulgated under this chapter or order of the ~~Board~~ *Department*, and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this section.

**§ 10.1-1311. Penalties for noncompliance; judicial review.**

A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of Section 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Upon a determination of the amount by the ~~Board~~ *Department*, the ~~Board~~ *Department* shall petition the circuit court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in a sum the court deems appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the assessment and collection costs, shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments, sanctions, or other requirements under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under other provisions of this chapter.

**§ 10.1-1312. Air pollution control districts.**

A. The ~~Board~~ *Department* may create, within any area of the Commonwealth, local air pollution control districts comprising a city or county or a part or parts of each, or two or more cities or counties, or any combination or parts thereof. Such local districts may be established by the ~~Board~~ *Department* on its own motion or upon request of the governing body or bodies of the area involved.

B. In each district there shall be a local air pollution control committee, the members of which shall be appointed by the ~~Board~~ *Department* from lists of recommended nominees submitted by the respective governing bodies of each locality, all or a portion of which are included in the district. The number of members on each committee shall be in the discretion of the ~~Board~~ *Department*. When a district includes two or more localities or portions thereof, the ~~Board~~ *Department* shall apportion the membership of the committee among the localities, provided that each locality shall have at least one representative on the committee. The members shall not be compensated out of state funds, but may be reimbursed for expenses out of state funds. Localities may provide for the payment of compensation and reimbursement of expenses to the members and may appropriate funds therefore. The portion of such payment to be borne by each locality shall be prescribed by agreement.

C. The local committee is empowered to observe compliance with the regulations of the Board and report instances of noncompliance to the ~~Board~~ *Department*, to conduct educational programs relating to air pollution and its effects, to assist the Department in its air monitoring programs, to initiate and make studies relating to air pollution and its effects, and to make recommendations to the ~~Board~~ *Department*.

D. The governing body of any locality, wholly or partially included within any such district, may appropriate funds for use by the local committee in air pollution control and studies.

**§ 10.1-1313. State Advisory Board on Air Pollution.**

The ~~Board~~ *Department* is authorized to name qualified persons to a State Advisory Board on Air Pollution.

**§ 10.1-1314. Owners to furnish plans, specifications and information.**

Every owner which the ~~Board~~ *Department* has reason to believe is causing, or may be about to cause, an air pollution problem shall on request of the ~~Board~~ *Department* furnish such plans, specifications and information as may be required by the ~~Board~~ *Department* in the discharge of its duties under this chapter. Any information, except emission data, as to secret processes, formulae or

methods of manufacture or production shall not be disclosed in public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

**§ 10.1-1315. Right of entry.**

Whenever it is necessary for the purposes of this chapter, the ~~Board~~ *Department* or any member, agent or employee thereof, when duly authorized by the ~~Board~~ *Director*, may at reasonable times enter any establishment or upon any property, public or private, to obtain information or conduct surveys or investigations.

**§ 10.1-1316. Enforcement and civil penalties.**

A. Any owner violating or failing, neglecting or refusing to obey any provision of this chapter, any Board regulation or *Department* order, or any permit condition may be compelled to comply by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained under subsection A, any owner violating or failing, neglecting or refusing to obey any Board regulation or *Department* order, any provision of this chapter, or any permit condition shall be subject, in the discretion of the court, to a civil penalty not to exceed \$32,500 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the owner's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any Board regulation or *Department* order, or any provision of this chapter, or any permit condition, the ~~Board~~ *Department* may provide, in any order issued by the ~~Board~~ *Department* against the owner, for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

D. The ~~Board~~ *Department* shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

**§ 10.1-1318. Appeal from decision of Department.**

A. Any owner aggrieved by a final decision of the ~~Board~~ *Department* under § 10.1-1309, § 10.1-1322 or subsection D of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the ~~Board~~ *Department* under § 10.1-1322 and who has exhausted all available administrative remedies for review of the ~~Board's~~ *Department's* decision, shall be entitled to judicial review of the ~~Board's~~ *Department's* decision in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

**§ 10.1-1320. Penalties; chapter not to affect right to relief or to maintain action.**

Any owner knowingly violating any provision of this chapter, Board regulation, or *Department* order, or any permit condition shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than \$10,000 for each violation within the discretion of the court. Each day of violation shall constitute a separate offense.

Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

**§ 10.1-1320.1. Duty of attorney for the Commonwealth.**

It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized

representative has reported any violation of (i) this chapter or, (ii) any regulation of the Board, or (iii) order of the Board Department, to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

**§ 10.1-1322. Permits.**

A. Pursuant to regulations adopted by the Board and subject to § 10.1-1322.04, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations of the Board and orders of the Board Department under the provisions of this chapter. To the extent allowed by federal law, any person holding a permit who is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, will reduce the emissions of regulated air pollutants, and meets the requirements of Best Available Control Technology shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subsection to the Department no later than 30 days prior to commencing construction.

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the Board's operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of \$25 per ton using 1990 as the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. The Board shall also collect promulgate regulations establishing permit application fee amounts not to exceed \$30,000 from applicants for a permit for a new major stationary source. The permit application fee amount paid shall be credited towards the amount of annual fees owed pursuant to this section during the first two years of the source's operation. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On or before January 1 of every even-numbered year, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance and Appropriations, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs that may be required by the federal government and administered by the Board Department, or any new permit program required by the Code of Virginia.

H. The permit program fee regulations promulgated pursuant to this section shall not become effective until July 1, 1993.

I. [Expired.]

**§ 10.1-1322.4. Permit modifications for alternative fuels or raw materials.**

Unless required by federal law or regulation, no additional permit or permit modifications shall be required by the Board for the use, by any source, of an alternative fuel or raw material, if the owner demonstrates to the Board that as a result of trial burns at his facility or other facilities or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased. To the extent allowed by federal law or regulation, no demonstration shall be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture



thereof in place of the same quantity of residual oil to fire industrial boilers.

**§ 10.1-1333. Permitting process for clean coal projects.**

To the extent authorized by federal law, the ~~Board~~ *Department of Environmental Quality* shall implement permit processes that facilitate the construction of clean coal projects in the Commonwealth by, among such other actions as it deems appropriate, giving priority to processing permit applications for clean coal projects.

**§ 15.2-2403.3. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Stormwater service districts; allocation of revenues.**

Any town located within a stormwater service district created pursuant to this chapter shall be entitled to any revenues collected within the town pursuant to subdivision 6 of § 15.2-2403, subject to the limitations set forth therein, so long as the town maintains its own municipal separate storm sewer system (MS4) permit issued by the ~~State Water Control Board~~ *Department of Environmental Quality* or maintains its own stormwater service district.

**§ 15.2-5101. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Authority" means an authority created under the provisions of § 15.2-5102 or Article 6 (§ 15.2-5152 et seq.) of this chapter or, if any such authority has been abolished, the entity succeeding to the principal functions thereof.

"Bonds" and "revenue bonds" include notes, bonds, bond anticipation notes, and other obligations of an authority for the payment of money.

"Cost," as applied to a system, includes the purchase price of the system or the cost of acquiring all of the capital stock of the corporation owning such system and the amount to be paid to discharge all of its obligations in order to vest title to the system or any part thereof in the authority; the cost of improvements; the cost of all land, properties, rights, easements, franchises and permits acquired; the cost of all labor, machinery and equipment; financing and credit enhancement charges; interest prior to and during construction and for one year after completion of construction; any deposit to any bond interest and principal reserve account, start-up costs and reserves and expenditures for operating capital; cost of engineering and legal services, plans, specifications, surveys, estimates of costs and revenues; other expenses necessary or incident to the determining of the feasibility or practicability of any such acquisition, improvement, or construction; administrative expenses and such other expenses as may be necessary or incident to the financing authorized in this chapter and to the acquisition, improvement, or construction of any such system and the placing of the system in operation by the authority. Any obligation or expense incurred by an authority in connection with any of the foregoing items of cost and any obligation or expense incurred by the authority prior to the issuance of revenue bonds under the provisions of this chapter for engineering studies, for estimates of cost and revenues, and for other technical or professional services which may be utilized in the acquisition, improvement or construction of such system is a part of the cost of such system.

"Cost of improvements" means the cost of constructing improvements and includes the cost of all labor and material; the cost of all land, property, rights, easements, franchises, and permits acquired which are deemed necessary for such construction; interest during any period of disuse during such construction; the cost of all machinery and equipment; financing charges; cost of engineering and legal expenses, plans, specifications; and such other expenses as may be necessary or incident to such construction.

"Federal agency" means the United States of America or any department, agency, instrumentality, or bureau thereof.

"Green roof" means a roof or partially covered roof consisting of plants, soil, or another lightweight growing medium that is installed on top of a waterproof membrane and designed in accordance with the Virginia Stormwater Management Program's standards and specifications for green roofs, as set forth in the Virginia BMP Clearinghouse.

"Improvements" means such repairs, replacements, additions, extensions and betterments of and to a system as an authority deems necessary to place or maintain the system in proper condition for the safe, efficient and economical operation thereof or to provide service in areas not currently receiving such service.

"Owner" includes persons, federal agencies, and units of the Commonwealth having any title or interest in any system, or the services or facilities to be rendered thereby.

"Political subdivision" means a locality or any institution or commission of the Commonwealth of Virginia.

"Refuse" means solid waste, including sludge and other discarded material, such as solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations or from community activities or residences. "Refuse" does not include (i) solid and dissolved materials in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the ~~State Water Control Board~~ *Department of Environmental Quality*, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954 (42 U.S.C. § 2011, et seq.), as amended.

"Refuse collection and disposal system" means a system, plant or facility designed to collect, manage, dispose of, or recover and use energy from refuse and the land, structures, vehicles and equipment for use in connection therewith.

"Sewage" means the water-carried wastes created in and carried, or to be carried, away from residences, hotels, schools, hospitals, industrial establishments, commercial establishments or any other private or public buildings, together with such surface or ground water and household and industrial wastes as may be present.

"Sewage disposal system" means any system, plant, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage, industrial waste or other wastes.

"Sewer system" or "sewage system" means pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage, industrial wastes or other wastes to a plant of ultimate disposal.

"Stormwater control system" means a structural system of any type that is designed to manage the runoff from land development projects or natural systems designated for such purposes, including, without limitation, retention basins, ponds, wetlands, sewers, conduits, pipelines, pumping and ventilating stations, and other plants, structures, and real and personal property used for support of the system.

"System" means any sewage disposal system, sewer system, stormwater control system, water or waste system, and for authorities created under Article 6 (§ 15.2-5152 et seq.) of this chapter, such facilities as may be provided by the authority under § 15.2-5158.

"Unit" means any department, institution or commission of the Commonwealth; any public corporate instrumentality thereof; any district; or any locality.

"Water or waste system" means any water system, sewer system, sewage disposal system, or refuse collection and disposal system, or any combination of such systems. "Water system" means all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water, or facilities incident thereto, and any integral part thereof, including water supply systems, water distribution systems, dams and facilities for the generation or transmission of hydroelectric power, reservoirs, wells, intakes, mains, laterals, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances, and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof but not including dams or facilities for the generation or transmission of hydroelectric power that are not incident to plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water.

#### **§ 28.2-1205.1. Coordinated review of water resources projects.**

A. Applications for water resources projects that require a Virginia Marine Resources permit and an individual Virginia Water Protection Permit under § 62.1-44.15:20 shall be submitted and processed through a joint application and review process.

B. The Commissioner and the Director of the Department of Environmental Quality, in consultation with the Virginia Institute of Marine Science, the Department of Wildlife Resources, the Department of Historic Resources, the Department of Health, the Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and any other appropriate or interested state agency, shall coordinate the joint review process to ensure the orderly evaluation of projects requiring both permits.

C. The joint review process shall include, but not be limited to, provisions to ensure that: (i) the initial application for the project shall be advertised simultaneously by the Commission and the Department of Environmental Quality; (ii) project reviews shall be completed by all state agencies that have been asked to review and provide comments, within 45 days of project notification by the Commission and the Department of Environmental Quality; (iii) the Commission and the ~~State Water Control Board~~ *Department of Environmental Quality* shall coordinate permit issuance and, to the extent practicable, shall take action on the permit application no later than one year after the agencies have received complete applications; (iv) to the extent practicable, the Commission and the ~~State Water Control Board~~ *Department of Environmental Quality* shall take action concurrently, but no more than six months apart; and (v) upon taking its final action on each permit, the Commission and the ~~State Water Control Board~~ *Department of Environmental Quality* shall provide each other with notification of its action and any and all supporting information, including any background materials or exhibits used in the application.

#### **§ 46.2-1601. Licensing of dealers of salvage vehicles; fees.**

A. It shall be unlawful for any person to engage in business in the Commonwealth as an auto recycler, salvage pool, or vehicle removal operator without first acquiring a license issued by the Commissioner for each such business at each location. The fee for the first such license issued or renewed under this chapter shall be \$100 per license year or part thereof. The fee for each additional license issued or renewed under this chapter for the same location shall be \$25 per license year or part

thereof. However, no fee shall be charged for supplemental locations of a business located within 500 yards of the licensed location.

B. No license shall be issued or renewed for any person unless (i) the licensed business contains at least 600 square feet of enclosed space, (ii) the licensed business is shown to be in compliance with all applicable zoning ordinances, and (iii) the applicant may (a) certify to the Commissioner that the licensed business is permitted under a Virginia Pollutant Discharge Elimination System individual or general permit issued by the ~~State Water Control Board~~ *Department of Environmental Quality* for discharges of storm water associated with industrial activity and provides the permit number(s) from such permit(s) or (b) certify to the Commissioner that the licensed business is otherwise exempt from such permitting requirements. Nothing in this section shall authorize any person to act as a motor vehicle dealer or salesperson without being licensed under Chapter 15 (§ 46.2-1500 et seq.) and meeting all requirements imposed by such chapter.

C. Licenses issued under this section shall be deemed not to have expired if the renewal application and required fees as set forth in subsection A are received by the Commissioner or postmarked not more than 30 days after the expiration date of such license. Whenever the renewal application is received by the Commissioner or postmarked not more than 30 days after the expiration date of such license, the license fees shall be 150 percent of the fees provided for in subsection A.

D. The Commissioner may offer an optional multiyear license for any license set forth in this section. When such option is offered and chosen by the licensee, all fees due at the time of licensing shall be multiplied by the number of years for which the license will be issued.

**§ 62.1-44.3. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.**

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

"Certificate" means any certificate issued by the ~~Board~~ *Department*.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources.

"The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.

"Member" means a member of the Board.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300 and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any state waters.

"Owner" means the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for

any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.

"Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations including the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board.

"Pretreatment standards" means any standards of performance or other requirements imposed by regulation of the Board upon an industrial user of a publicly owned treatment works.

"Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"Regulation" means a regulation issued under § 62.1-44.15 (10).

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to § 62.1-44.15 (7).

"Ruling" means a ruling issued under § 62.1-44.15 (9).

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

"Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

**§ 62.1-44.3. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.**

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the meanings hereinafter respectively ascribed to them:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream

beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural uses, electric power generation, commercial, and industrial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

"Certificate" means any certificate or permit issued by the ~~Board~~ Department.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Establishment" means any industrial establishment, mill, factory, tannery, paper or pulp mill, mine, coal mine, colliery, breaker or coal-processing operations, quarry, oil refinery, boat, vessel, and every other industry or plant or works the operation of which produces industrial wastes or other wastes or which may otherwise alter the physical, chemical or biological properties of any state waters.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business or from the development of any natural resources.

"Land-disturbance approval" means an approval allowing a land-disturbing activity to commence issued by (i) a Virginia Erosion and Stormwater Management Program authority after the requirements of § 62.1-44.15:34 have been met or (ii) a Virginia Erosion and Sediment Control Program authority after the requirements of § 62.1-44.15:55 have been met.

"The law" or "this law" means the law contained in this chapter as now existing or hereafter amended.

"Member" means a member of the Board.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that is:

1. Owned or operated by a federal entity, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including a special district under state law such as a sewer district, flood control district, drainage district or similar entity, or a designated and approved management agency under § 208 of the federal Clean Water Act (33 U.S.C. § 1251 et seq.) that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. Not a combined sewer; and

4. Not part of a publicly owned treatment works.

"Normal agricultural activities" means those activities defined as an agricultural operation in § 3.2-300 and any activity that is conducted as part of or in furtherance of such agricultural operation but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Normal silvicultural activities" means any silvicultural activity as defined in § 10.1-1181.1 and any activity that is conducted as part of or in furtherance of such silvicultural activity but shall not include any activity for which a permit would have been required as of January 1, 1997, under 33 U.S.C. § 1344 or any regulations promulgated pursuant thereto.

"Other wastes" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances except industrial wastes and sewage which may cause pollution in any state waters.

"Owner" means the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or any other legal entity.

"Policies" means policies established under subdivisions (3a) and (3b) of § 62.1-44.15.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not

sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution" for the terms and purposes of this chapter.

"Pretreatment requirements" means any requirements arising under the Board's pretreatment regulations including the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the Board.

"Pretreatment standards" means any standards of performance or other requirements imposed by regulation of the Board upon an industrial user of a publicly owned treatment works.

"Reclaimed water" means water resulting from the treatment of domestic, municipal, or industrial wastewater that is suitable for a direct beneficial or controlled use that would not otherwise occur. Specifically excluded from this definition is "gray water."

"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a direct beneficial or controlled use that would not otherwise occur.

"Regulation" means a regulation issued under subdivision (10) of § 62.1-44.15.

"Reuse" means the use of reclaimed water for a direct beneficial use or a controlled use that is in accordance with the requirements of the Board.

"Rule" means a rule adopted by the Board to regulate the procedure of the Board pursuant to subdivision (7) of § 62.1-44.15.

"Ruling" means a ruling issued under subdivision (9) of § 62.1-44.15.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Sewage treatment works" or "treatment works" means any device or system used in the storage, treatment, disposal, or reclamation of sewage or combinations of sewage and industrial wastes, including but not limited to pumping, power, and other equipment, and appurtenances, and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for the ultimate disposal of residues or effluent resulting from such treatment. These terms shall not include onsite sewage systems or alternative discharging sewage systems.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to a point of ultimate disposal.

"Special order" means a special order issued under subdivisions (8a), (8b), and (8c) of § 62.1-44.15.

"Standards" means standards established under subdivisions (3a) and (3b) of § 62.1-44.15.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

**§ 62.1-44.6:1. Permit rationale.**

*In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.*

**§ 62.1-44.14. Chairman; Executive Director; employment of personnel; supervision; budget preparation.**

The Board shall elect its chairman, and the Executive Director shall be appointed as set forth in § 2.2-106. The Executive Director shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board; and, further, the Board may delegate to its Executive Director any of the powers and duties invested in it by this chapter except the adoption and promulgation of standards, rules and regulations; and the revocation of certificates. The Executive Director is authorized to issue, modify or revoke orders in cases of emergency as described in §§ 62.1-44.15 (8b) and 62.1-44.34:20 of this chapter. The Executive Director is further authorized to employ such consultants and full-time technical and clerical workers as are necessary and within the available funds to carry out the purposes of this chapter.

It shall be the duty of the Executive Director to exercise general supervision and control over the quality and management of all state waters and to administer and enforce this chapter, and all certificates, standards, policies, rules, regulations, rulings and special orders promulgated by the Board.

The Executive Director shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations. The Executive Director shall be vested with all the authority of the Board when it is not in session, except for the Board's authority to ~~consider permits pursuant to § 62.1-44.15:02~~ and to issue special orders pursuant to subdivisions (8a) and (8b) of § 62.1-44.15 and subject to such regulations as may be prescribed by the Board. In no event shall the Executive Director have the authority to adopt or promulgate any regulation.

**§ 62.1-44.15:81. Application and preparation of draft certification conditions.**

A. Any applicant for a federal license or permit for a natural gas transmission pipeline greater than 36 inches inside diameter subject to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) shall submit a separate application, at the same time the Joint Permit Application is submitted, to the Department containing a description of all activities that will occur in upland areas, including activities in or related to (i) slopes with a grade greater than 15 percent; (ii) karst geology features, including sinkholes and underground springs; (iii) proximity to sensitive streams and wetlands identified by the Department of Conservation and Recreation or the Department of Wildlife Resources; (iv) seasonally high water tables; (v) water impoundment structures and reservoirs; and (vi) areas with highly erodible soils, low pH, and acid sulfate soils. Concurrently with the Joint Permit Application, the applicant shall also submit a detailed erosion and sediment control plan and stormwater management plan subject to Department review and approval.

B. After receipt of an application in accordance with subsection A, the Department shall issue a request for information about how the erosion and sediment control plan and stormwater management plan will address activities in or related to the upland areas identified in subsection A. The response to such request shall include the specific strategies and best management practices that will be utilized by the applicant to address challenges associated with each area type and an explanation of how such strategies and best management practices will ensure compliance with water quality standards.

C. At any time during the review of the application, but prior to issuing a certification pursuant to this article, the Department may issue an information request to the applicant for any relevant additional information necessary to determine (i) if any activities related to the applicant's project in upland areas are likely to result in a discharge to state waters and (ii) how the applicant proposes to minimize water quality impacts to the maximum extent practicable to protect water quality. The information request shall provide a reasonable amount of time for the applicant to respond.

D. The Department shall review the information contained in the application, the response to the information request in subsection B, and any additional information obtained through any information requests issued pursuant to subsection C to determine if any activities described in the application or in any additional information requests (i) are likely to result in a discharge to state waters with the potential to adversely impact water quality and (ii) will not be addressed by the Virginia Water Protection Permit issued for the activity pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.). The Department of Wildlife Resources, the Department of Conservation and Recreation, the Department of Health, and the Department of Agriculture and Consumer Services shall consult with the Department during the review of the application and any additional information obtained through any information requests issued pursuant to subsection B or C. Following the conclusion of its review, the Department shall develop a draft certification or denial. A draft certification, including (i) any additional conditions for activities in upland areas necessary to protect water quality and (ii) a condition that the applicant shall not commence land-disturbing activity prior to approval by the Department of the erosion and sediment control plan and stormwater management plan required pursuant to subsection E, shall be noticed for public comment and potential issuance by the Department ~~or the Board pursuant to § 62.1-44.15:02~~. The Department shall make the information contained in the application and any additional information obtained through any information requests issued pursuant to subsection B or C available to the public.

E. Notwithstanding any applicable annual standards and specifications for erosion and sediment control or stormwater management pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) or 2.4 (§ 62.1-44.15:51 et seq.), the applicant shall not commence land-disturbing activity prior to resolution of any unresolved issues identified in subsection B to the satisfaction of the Department and approval by the Department of an erosion and sediment control plan and stormwater management plan in accordance with applicable regulations. The Department shall act on any plan submittal within 60 days after initial submittal of a completed plan to the Department. The Department may issue either approval or disapproval and shall provide written rationale for its decision. The Department shall act on any plan that has been previously disapproved within 30 days after the plan has been revised and resubmitted for approval.

F. No action by either the Department or the Board on a certification pursuant to this article shall alter the siting determination made through Federal Energy Regulatory Commission or State Corporation Commission approval.

G. The Department shall assess an administrative charge to the applicant to cover the direct costs of services rendered associated with its responsibilities pursuant to this section.

H. Neither the Department nor the Board shall expressly waive certification of a natural gas

transmission pipeline of greater than 36 inches inside diameter under § 401 of the federal Clean Water Act (33 U.S.C. § 1341). The Department or the Board shall act on any certification request within a reasonable period of time pursuant to federal law. Nothing in this section shall be construed to prohibit the Department or the Board from taking action to deny a certification in accordance with the provisions of § 401 of the federal Clean Water Act (33 U.S.C. § 1341).

**§ 62.1-44.15:83. Requests for public hearing, hearings, and final decisions procedures.**

A. The issuance of a certification pursuant to this article shall be a permit action for purposes of § 62.1-44.15:02.

B. The Department shall assess an administrative charge to the applicant to cover the direct costs of services rendered associated with its responsibilities pursuant to this section.

**§ 62.1-104. Definitions.**

(1) Except as modified below, the definitions contained in Title 1 shall apply in this chapter.

(2) "Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

(3) "Impounding structure" means a man-made device, whether a dam across a watercourse or other structure outside a watercourse, used or to be used for the authorized storage of flood waters for subsequent beneficial use.

(4) "Watercourse" means a natural channel having a well-defined bed and banks and in which water flows when it normally does flow. For the purposes hereof they shall be limited to rivers, creeks, streams, branches, and other watercourses which are nonnavigable in fact and which are wholly within the jurisdiction of the Commonwealth.

(5) "Riparian land" is land which is contiguous to and touches a watercourse. It does not include land outside the watershed of the watercourse. Real property under common ownership and which is not separated from riparian land by land of any other ownership shall likewise be deemed riparian land, notwithstanding that such real property is divided into tracts and parcels which may not bound upon the watercourse.

(6) "Riparian owner" is an owner of riparian land.

(7) "Average flow" means the average discharge of a stream at a particular point and normally is expressed in cubic feet per second. It may be determined from actual measurements or computed from the most accurate information available.

(8) "Diffused surface waters" are those which, resulting from precipitation, flow down across the surface of the land until they reach a watercourse, after which they become parts of streams.

(9) "Floodwaters" means water in a stream which is over and above the average flow.

(10) "Court" means the circuit court of the county or city in which an impoundment is located or proposed to be located.

**§ 62.1-242. Definitions.**

As used in this chapter, unless the context requires otherwise:

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

"Surface water withdrawal permit" means a document issued by the Board evidencing the right to withdraw surface water.

"Surface water management area" means a geographically defined surface water area in which the Board has deemed the levels or supply of surface water to be potentially adverse to public welfare, health and safety.

"Surface water" means any water in the Commonwealth, except ground water, as defined in § 62.1-255.

**§ 62.1-248.2. Permit rationale.**

*In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by*



*certified mail to the permittee or applicant.*

**§ 62.1-255. Definitions.**

As used in this chapter, unless the context requires otherwise:

"Agricultural irrigation" means irrigation that is used to support any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silvicultural activity.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board. *However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "Board" means the Department of Environmental Quality.*

"Department" means the Department of Environmental Quality.

"Eastern Shore Groundwater Management Area" means the ground water management area declared by the Board encompassing the Counties of Accomack and Northampton.

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of the Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

"Ground water withdrawal permit" means a certificate issued by the Board permitting the withdrawal of a specified quantity of ground water in a ground water management area.

"Irrigation" means the controlled application of water through man-made systems to supply water requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

"Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of the Commonwealth or any other state or country.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

**§ 62.1-263.1. Permit rationale.**

*In granting a permit pursuant to this chapter, the Department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the Department is to deny a permit pursuant to this chapter, the Department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the Department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.*

**2. That §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia are repealed.**

**3. That any permits or orders issued by the Air Pollution Control Board or the State Water Control Board prior to the effective date of this act shall continue in full force and are enforceable by the Department of Environmental Quality.**

**4. That nothing in this act shall be construed to limit or impact § 3.2-301 or 15.2-2288.6 of the Code of Virginia.**

**5. That at each regular meeting of the Air Pollution Control Board and the State Water Control Board (the Boards), the Department of Environmental Quality (the Department) shall provide an overview and update regarding any controversial permits pending before the Department that are relevant to each board. Immediately after such presentation by the Department, the Boards shall have an opportunity to respond to the Department's presentation and provide commentary regarding such pending permits. Before rendering a final decision on a controversial permit, the Department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the Department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the Department's public comment summary and response. No new information will be accepted at that time.**

For purposes of this enactment, "controversial permit" means an air or water permitting action for which a public hearing has been granted pursuant to the provisions of the sixth enactment of this act. "Controversial permit" also means an air permitting action where a public hearing is required for (i) the construction of a new major source or for a major modification to an existing source, (ii) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iv) a new fossil fuel-fired compressor station facility used to transport natural gas, or (v) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas.

6. That any changes to regulations necessary to implement the provisions of this act shall include the following criteria for requesting and granting a public hearing on a permit action during a public comment period in those instances where a public hearing is not mandatory under state or federal law or regulation. During the public comment period on permit action, interested persons may request a public hearing to contest such action or the terms and conditions thereof. Requests for a public hearing shall contain the following information: (i) the name and postal mailing or email address of the requester; (ii) the names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, "person" includes an unincorporated association); (iii) the reason for the request for a public hearing; (iv) a brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and (v) where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Air Pollution Control Board or the State Water Control Board, as applicable. Upon completion of the public comment period on a permit action, the Director of the Department of Environmental Quality shall review all timely requests for public hearing filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the Director finds the following: (a) that there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing; (b) that the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and (c) that the action requested by the interested party is not on its face inconsistent with, or in violation of, the basic laws of the State Air Pollution Control Board if the permit action is an air permit action, or the basic laws of the State Water Control Board if the permit action is a water permit action, federal law, or any regulation promulgated thereunder. The Director of the Department of Environmental Quality shall, forthwith, notify by email or mail at his last known address (1) each requester and (2) the applicant or permittee of the decision to grant or deny a public hearing. If the request for a public hearing is granted, the Director shall schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing. The Director shall cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date. In making its decision, the Department shall consider (A) the verbal and written comments received during the public comment period and public hearing made part of the record, (B) any commentary of the Board, and (C) the agency files. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 10.1-1307.01 of the Code of Virginia, as amended by this act, or § 62.1-44.15:01 of the Code of Virginia. In addition, the Director may, in his discretion, convene a public hearing on a permit action.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	Primary: Part I and Articles 1 and 3 through 10 of Part II of 9VAC5-80 Secondary: 9VAC5-85; 9VAC5-170
<b>VAC Chapter title(s)</b>	Regulations for the Control and Abatement of Air Pollution; Permits for Stationary Sources of Pollutants Subject to Regulation; Regulation for General Administration
<b>Action title</b>	Revise regulations to implement new requirements for transfer of authority and requests for certain public hearings (Revision D22).
<b>Final agency action date</b>	
<b>Date this document prepared</b>	

This information is required for executive branch review pursuant to 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. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to 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*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Chapter 356 of the 2022 Acts of Assembly limits the authority of the State Air Pollution Control Board to issuance of regulations, and transfers the board's existing authority to issue permits, orders, and variances to the Department of Environmental Quality (DEQ). Procedures for public comment on pending controversial permits and on regulatory changes necessary to implement the legislation are established. A number of technical corrections are also being made.

**Mandate and Impetus**

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

The mandate for this regulatory change is Chapter 356 of the 2022 Acts of Assembly.

**Acronyms and Definitions**

*Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.*

DEQ - Department of Environmental Quality

**Statement of Final Agency Action**

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On #[date], the State Air Pollution Control Board took final action to adopt amendments to the Regulations for the Control and Abatement of Air Pollution (Part I and Articles 1 and 3 through 10 of Part II of 9VAC5-80), Permits for Stationary Sources of Pollutants Subject to Regulation (9VAC5-85); and the Regulation for General Administration (9VAC5-170). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act because they are necessary to conform to Virginia statutory law. A number of regulation amendments are also exempt by the provisions of § 2.2-4006 A 3 because they consist only of changes in style or form or corrections of technical errors.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

**Legal Basis**

*Identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

Statutory Authority

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.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

State Requirements

This regulatory action has been initiated pursuant to Chapter 356 of the 2022 Acts of Assembly.

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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The purpose of the regulations is to protect the public's health and welfare by requiring sources of air pollution to obtain a permit or variance, or meet an order, that meets federal and state standards for the control of air pollution with additional notice to and time for input from the public . The proposed amendments are being made to conform to new procedures for permits and variances as mandated by Chapter 356 of the 2022 Acts of Assembly.

**Substance**

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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Chapter 356 of the 2022 Acts of Assembly amends the Air Pollution Control Law of Virginia to limit the authority of the Air Pollution Control Board to issuance of regulations, and transfers the board's existing authority to issue permits, orders, and variances to DEQ, with certain exceptions and considerations. At each regular meeting of the board, DEQ must provide an overview and update regarding any controversial permits pending before DEQ that are relevant to the board, which will have an immediate opportunity to respond. DEQ is further required to publish a summary of public comments received. After such publication, DEQ is required to publish public responses to the public comment summary and hold a public hearing to provide an opportunity for response. The amendments to the law further define "controversial permit," and require that changes to the implementing regulations include specific criteria for requesting and granting a public hearing on a permit action during a public comment period in those instances where a public hearing is not mandatory under state or federal law or regulation. The amendments also allow the Director of DEQ to convene a public hearing on a permit action at his discretion. Finally, a number of technical corrections are being made.

**Issues**

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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1. Public: The primary advantage to the general public is that the permitting process will operate in an efficient, transparent manner; this will be an advantage to the regulated community as well, although some regulated entities may undergo the expense of additional public notice.

2. Department: The primary advantage to the department is that the permitting process will operate in an efficient, transparent manner. There are no disadvantages to the department as a result of the regulatory change.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no requirements more restrictive than the federal. The purpose of the legislative amendments was to transfer authority for certain actions, and did not change any underlying federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other state agencies particularly affected: State Air Pollution Control Board; DEQ.

Localities particularly affected: None.

Other entities particularly affected: Regulated entities seeking a permit must now obtain the approval of DEQ instead of the board. There are a number of clarifications and additions to the public participation process that may affect regulated entities and the public.

For purposes of "Locality Particularly Affected" under the board's statutes: No locality will be particularly affected under the board's statutes.

**Details of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
<b>9VAC5-10, General Definitions.</b>			
*9VAC5-10-20	n/a	Terms defined.	Definition of "board" amended. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>*Part I of 9VAC5-80, [Certain] Permit Actions Before the Board [Department].</b>			
*9VAC5-80-5	n/a	Definitions.	Amended to add a new definition of "controversial permit," and to replace "board" with "department" as appropriate. Delete definition of "board" as updated definition is more appropriately provided in 9VAC5-10 and -170. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
*9VAC5-80-15	n/a	Applicability	Amended to clarify the distinction between a public participation process and public comment period, and to more accurately reference responsibilities among the board and the department. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-80-25	n/a	Direct consideration of permit actions.	Repealed to reflect the transfer of permitting authority from the board to the department. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-80-35	n/a	Public hearings to contest permit actions.	Amended to reflect the transfer of permitting authority from the board to the department, and introduction of the concept of a "controversial" permit. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
	*9VAC5-80-37	Notification of pending controversial permits by the department to the board.	Adds new requirement for notice to the board of controversial permits. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
	*9VAC5-80-45	Additional public hearing for controversial permits.	Adds new requirements for the opportunity for additional public comment on certain permits. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Part II of 9VAC5-80</b>			
<b>Article 1, Federal Operating Permits for Stationary Sources.</b>			
9VAC5-80-50 D 3 and F	n/a	Applicability.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-60 A and C	n/a	Definitions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-70 B	n/a	General.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-80 A; D 3, 4, 6, 8; F 1, 3-6; G	n/a	Applications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-90 A, D 2, H, I 3, J 3	n/a	Application information required.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-100 A	n/a	Emission caps.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-110 A 1-3; F 2; G 6; J; K 1, 2, 4-6; L 1-4; N 2, 3	n/a	Permit content.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-120 A; A 1, 3, 4; B 1, 3; C 1, 3, 5; D 1	n/a	General permits.	Replace "board" with "department" as appropriate, and clarify distinction between a general permit regulation promulgated by the board and a general permit issued by the department. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-130 A; C 2	n/a	Temporary sources.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-140 A; C 3	n/a	Permit shield.	Replace "board" with "department" as appropriate, and correct code citations to reflect transfer of permitting authority. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-150 A 1-3; B; D; E; F*	n/a	Action on permit application.	Replace "board" with "department" as appropriate, and update VAC citation to reflect new regulatory text; add new requirement for explanation of permit approval or denial. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-160 B; C	n/a	Transfer of permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-170 C	n/a	Permit renewal and expiration.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-190 A; C; E 4	n/a	Changes to permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.



Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-200 A 4; B 1-3; C	n/a	Administrative permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-210 D; E 1, 2; F 2	n/a	Minor permit modifications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-220 B 6; C; D	n/a	Group processing of minor permit modifications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-230 B 3; E; F	n/a	Significant modification procedures.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-240 C; D 1-5	n/a	Reopening for cause.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-250 B 4	n/a	Malfunction.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-260 A 3; C 1, 2; E 2; F	n/a	Enforcement.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-80-270 A; B; C 1; D; E 1-3; F	n/a	Public participation.	Replace "board" with "department" as appropriate, and revise text to meet specific code changes. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-280 A; B 1-3; C 1, 3	n/a	Operational flexibility.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-290 A 1, 2; B 1, 2; C 3, 4; D 3, 4; E	n/a	Permit review by EPA and affected states.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-300 C	n/a	Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Article 3, Federal Operating Permits for Acid Rain Sources.</b>			
9VAC5-80-360 E	n/a	Applicability.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-370	n/a	Definitions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-390 B; C; C 2	n/a	New units exemption.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-400 B 2, 3; C	n/a	Retired units exemption.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-410 B	n/a	General.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-420 A 1, 2; E 1; F 1; G 1, 2	n/a	Standard requirements.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-430 A; C 2; D 3, 4, 6, 8, 9; F 1, 3-7; G 1, 4, 5; H; I 1, 2	n/a	Applications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-440 A; D 2; H; I 4; J 3	n/a	Application information required.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-450 B 2; C 1; D 1	n/a	Acid rain compliance plan and compliance options.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-460 C 1-3; E; E 1; F 1, 3	n/a	Repowering extensions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-470 A; A 3; B; C; D	n/a	Units with repowering extension plans.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-480 A	n/a	Emission caps.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-490 A 1, 2, 4; F 2; G 6; J; K 1, 2, 4-6; L 1-3, 5; N 2, 3; P 1	n/a	Permit content.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-500 A; D 3	n/a	Permit shield.	Replace "board" with "department" as appropriate. Needed to meet the

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-510 A; A 1; B 1-3; C 1-4; D; F, F 1, 3; G; H*	n/a	Action on permit application.	Replace "board" with "department" as appropriate; add new requirement for explanation of permit approval or denial. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-520 B; C	n/a	Transfer of permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-530 C	n/a	Permit renewal and expiration.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-550 A; B 8, 11; C; E 4	n/a	Changes to permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-560 A 4; B 1-3; C	n/a	Administrative permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-570 D; E 1, 2; F 2	n/a	Minor permit modifications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-580 B 6; C; D	n/a	Group processing of minor permit modifications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-590 B 3; E; F	n/a	Significant modification procedures.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-600 E; F	n/a	Permit modifications for affected units.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-610 B 1, 3; C 1	n/a	Fast-track modifications for affected units.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-620 A 1, 10; B 1-3	n/a	Administrative permit amendments for affected units.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-640 C; D; E 1-5	n/a	Reopening for cause.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-650 B 4	n/a	Malfunction.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-660 A 3; C 1-3, 7, 8; E 2; F	n/a	Enforcement.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-80-670 A-D; E 1-3; F	n/a	Public participation.	Replace "board" with "department" as appropriate, and revise text to meet specific code changes. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-680 A; B 1-3; C 1, 3	n/a	Operational flexibility.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-690 A 1, 2; B 1, 2; C 3, 4; D 3, 4; E	n/a	Permit review by EPA and affected states.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-700 C	n/a	Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Article 4, Insignificant Activities.</b>			
9VAC5-80-720 B 1	n/a	Insignificant activities.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Article 5, State Operating Permits.</b>			
9VAC5-80-800 C 2	n/a	Applicability.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-810 A; C	n/a	Definitions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-820 A-E; G	n/a	General.	Replace "board" with "department" as appropriate, and correct a citation (subsection C). Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-830 A; B	n/a	Applications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-840 A; B 9; C; E	n/a	Application information required.	Replace "board" with "department" as appropriate. Needed to meet the

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-850 A; C 3; D	n/a	Standards and conditions for granting permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-860 A; B, B 1, 5; C; D; E; G*	n/a	Action on permit application.	Replace "board" with "department" as appropriate; add new requirement for explanation of permit approval or denial. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-870 A; B; C	n/a	Application review and analysis.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-880 A; B	n/a	Compliance determination and verification by testing.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-890 A; B	n/a	Monitoring requirements.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-900 A; B; C	n/a	Reporting requirements.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-930	n/a	Compliance with local zoning requirements.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-940 B	n/a	Transfer of permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-950 A; B; C	n/a	Termination of permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-960 A 2; B 1; C	n/a	Changes to permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-970 A 3; B 1, 2	n/a	Administrative permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-980 C; F; G 2	n/a	Minor permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-990 D; E	n/a	Significant amendment procedures.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1000 A 2, 3; C	n/a	Reopening for cause.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1010 A; B, B 5; C; E-G	n/a	Enforcement.	Replace "board" with "department" as appropriate, and correct a citation (subdivision B 5). Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-80-1020 A; B, B 1; C, C 1-4; D	n/a	Public participation.	Replace "board" with "department" as appropriate, and revise text to meet specific code changes. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1030 A, A 1, 3, 4; B 1, 3; C 1 3, 5; D 1	n/a	General permits.	Replace "board" with "department" as appropriate, , and clarify distinction between a general permit regulation promulgated by the board and a general permit issued by the department. Needed to meet the requirements of Chapter 356. Correct an outdated APA reference in A 4, needed for the rule to operate correctly. No significant impact anticipated.
9VAC5-80-1040	n/a	Review and evaluation of article.	Repeal entire section, which was established in the late 1990s and subsequently superseded by other APA requirements. Needed for consistency and clarity. No significant impact anticipated.
<b>Article 6, Permits for New and Modified Stationary Sources.</b>			
9VAC5-80-1100 E; J	n/a	Applicability.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1105 A 1-4; B 13; C 2; D 2	n/a	Permit exemptions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1110 C	n/a	Definitions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-1120 A-G	n/a	General.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1140 A; D	n/a	Applications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1150 A; B, B 3, 9; C	n/a	Application information required.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1160 A; B; C, C 1, 4; D; E; H*	n/a	Action on permit application.	Replace "board" with "department" as appropriate, amend text to reflect the transfer of permitting authority required by statute; add new requirement for explanation of permit approval or denial. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-80-1170 B-D; D 4; E, E 1; F-I	n/a	Public participation.	Replace "board" with "department" as appropriate, and remove reference to repealed code requirements to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1180 A	n/a	Standards and conditions for granting permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1190	n/a	Application review and analysis.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1200 C; E, E 3-5; F	n/a	Compliance determination and verification by performance testing.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1210 D; F-H; K-M	n/a	Permit invalidation, suspension, revocation and enforcement.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1230	n/a	Compliance with local zoning requirements.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1240 A; B; C	n/a	Transfer of permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-1250 A, A 1, 3, 4; B 1, 3; C 1, 3, 5; D	n/a	General permits.	Replace "board" with "department" as appropriate, and clarify distinction between a general permit regulation promulgated by the board and a general permit issued by the department. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1255 A 1, 2; B; C	n/a	Actions to combine permit terms and conditions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1260 A 2; B 1; C	n/a	Actions to change permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1270 A 3; B 1, 2	n/a	Administrative permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1280 C; F; G 2	n/a	Minor permit amendments.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1290 C-E	n/a	Significant amendment procedures.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1300 A 2, 3; C	n/a	Reopening for cause.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Article 7, Permits For New And Reconstructed Major Sources Of Hazardous Air Pollutants.</b>			
9VAC5-80-1410 A; C	n/a	Definitions.	Replace "board" with "department" as appropriate, and correct a federal code citation. Needed to meet the requirements of Chapter 356, and to implement the regulation properly. No significant impact anticipated.
9VAC5-80-1420 B; D; F, F 1-4; G 2-6	n/a	General.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1430 A; D	n/a	Applications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.



Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-1440 A; B, B 14; C 4; E	n/a	Application information required.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1450 A; B, B 1, 5; C, C 1-3; D-F; I; L*	n/a	Action on permit application.	Replace "board" with "department" as appropriate, amend text to reflect the transfer of permitting authority required by statute; add new requirement for explanation of permit approval or denial. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-80-1460 B-F; F 1; G-K; K 1, 3	n/a	Public participation.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1470 A, A 3; B 1; C 3	n/a	Standards and conditions for granting permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1480 A	n/a	Application review and analysis.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1490 B; D; E, E 3-5; F	n/a	Compliance determination and verification by performance testing.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1500 C; E-G; J-L	n/a	Permit invalidation, rescission, revocation and enforcement.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1530 B; C	n/a	Transfer of permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1540 A 2; B 1; C	n/a	Changes to permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1550 A 3; B 1, 2	n/a	Administrative permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1560 C; F; G 2	n/a	Minor permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-1570 D; E	n/a	Significant amendment procedures.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1580 A 2, 3; C	n/a	Reopening for cause.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1590 B, B 1, 2; C	n/a	Requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirements.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Article 8. Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas.</b>			
9VAC5-80-1605 E	n/a	Applicability.	Replace "board" with "department." Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1615 C	n/a	Definitions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1625 A; C-F; G 2; H	n/a	General.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1655 A; C	n/a	Applications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1665	n/a	Compliance with local zoning requirements.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1675 B; C, C 3-5; D	n/a	Compliance determination and verification by performance testing.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1685 B	n/a	Stack heights.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1695 A 2; E; F 1	n/a	Exemptions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1715 B 2	n/a	Source impact analysis.	Replace "board" with "department" as appropriate. Needed to meet the

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1735 A 2, 4; B	n/a	Air quality analysis.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1745 B	n/a	Source information.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1755 C	n/a	Additional impact analyses.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1765 A, A 4; B-H	n/a	Sources affecting federal class I areas -- additional requirements.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1773 A; B, B 4; C-E; H*	n/a	Action on permit application.	Replace "board" with "department" as appropriate; amend text to reflect the transfer of permitting authority required by statute; add new requirement for explanation of permit approval or denial. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-80-1775 B-K	n/a	Public participation.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1785 B 2, 4, 5; C; E	n/a	Source obligation.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1825 A; B, B 2-4; C, C 3; D	n/a	Innovative control technology.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1865 A; B; C 1; D; E; F 3, 10; H 1, 2; I 1-3; J 1-3; K, K 1-4; L 1, 3; M 1, 3, 5, 6, 8, 9; O, O 1, 3; P	n/a	Actuals plantwide applicability limits (PALs).	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1915 A 1, 2; B; C	n/a	Actions to combine permit terms and conditions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-1925 A 2; B 1; C	n/a	Actions to change permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1935 A 3; B 1, 2	n/a	Administrative permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1945 C; F; G 2	n/a	Minor permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1955 D; E	n/a	Significant amendment procedures.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1965 A 2, 3; C	n/a	Reopening for cause.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1975 B; C	n/a	Transfer of permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-1985 C; E-G; J	n/a	Permit invalidation, suspension, revocation, and enforcement.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Article 9, Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region.</b>			
9VAC5-80-2000 F	n/a	Applicability.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2010 C	n/a	Definitions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2020 A-D; E 2; F	n/a	General.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2030 A; D	n/a	Applications.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2040 A; B, B 10, 12; C	n/a	Application information required.	Replace "board" with "department" as appropriate. Needed to meet the

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2050 A, A 3	n/a	Standards and conditions for granting permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2060 A; B, B 1, 4; C; D; G*	n/a	Action on permit application.	Replace "board" with "department" as appropriate; amend text to reflect the transfer of permitting authority required by statute; add new requirement for explanation of permit approval or denial. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-80-2070 B-F; F 1; G-K; K 1, 3	n/a	Public participation.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2080 B; C, C 3-5; D	n/a	Compliance determination and verification by performance testing.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2090	n/a	Application review and analysis.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2091 B 2, 4, 5; C; E	n/a	Source obligation.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2120 A; D, D 2, 4; G; K; M 1, 3; N; O	n/a	Offsets.	Replace "board" with "department" as appropriate, and correct a web page title. Needed to meet the requirements of Chapter 356 and to enable the regulation to operate properly. No significant impact anticipated.
9VAC5-80-2140 B 1	n/a	Exemptions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC 5-80-2144 A; B; C 1; D; E; F 3, 10; H 1, 2; I 1-3; J 1-3; K, K 1-4; L 1, 3; M 1, 3, 5, 6, 8, 9; O, O 1, 3; P	n/a	Actuals plantwide applicability limits (PALs).	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-2150	n/a	Compliance with local zoning requirements.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2170 B, C	n/a	Transfer of permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2180 C, E-G; J	n/a	Permit invalidation, suspension, revocation, and enforcement.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2195 A 1, 2; B; C	n/a	Actions to combine permit terms and conditions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2200 A 2; B 1; C	n/a	Actions to change permits.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2210 A 3; B 1, 2	n/a	Administrative permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2220 C; F; G 2	n/a	Minor permit amendments.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2230 D; E	n/a	Significant amendment procedures.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-80-2240 A 2, 3; C	n/a	Reopening for cause.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Article 10, Permit Application Fees for Stationary Sources.</b>			
9VAC5-80-2260 D	n/a	Definitions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>9VAC5-85, Permits for Stationary Sources of Pollutants Subject to Regulation.</b>			
<b>Part III, Prevention of Significant Deterioration Permit Actions.</b>			
9VAC5-85-40	n/a	Prevention of Significant Deterioration Area permit actions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-85-50 C	n/a	Definitions.	Replace "board" with "department" as appropriate. Needed to meet the

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			requirements of Chapter 356. No significant impact anticipated.
9VAC5-85-55 A 1; B-F; H 1, 2; I 1-3; J 1-5; K 1, 3; L 1, 3, 5, 6, 8, 9; N, N 1, 3; O	n/a	Actual plantwide applicability limits (PALs).	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>9VAC5 Chapter 170, Regulation for General Administration.</b>			
<b>Part I, Definitions.</b>			
9VAC5-170-10 A	n/a	Use of terms.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-170-20	n/a	Terms defined.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Part II, General Provisions.</b>			
*9VAC5-170-30 C; D	n/a	Applicability.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-170-40 A; B	n/a	Hearings and proceedings.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-170-50 B	n/a	Policy and procedural information and guidance.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-170-60 A; B; D	n/a	Availability of information.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-170-70	n/a	Evaluation of regulation.	Repeal entire section, which was established in the late 1990s and subsequently superseded by other APA requirements. Needed for consistency and clarity. No significant impact anticipated.
<b>Part III, Regulations and Orders.</b>			
9VAC5-170-80 C	n/a	Establishment of regulations and orders.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Part V, Enforcement.</b>			

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
*9VAC5-170-120 A; C; D	n/a	Enforcement of regulations, permits, and orders.	Replace "board" with "department" as appropriate, and amend text to reflect the transfer of permitting authority required by statutes. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-170-130 A; B	n/a	Right of entry.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Part VI, Board Actions. [Variances, Ordinances, and Approvals.]</b>			
9VAC5-170-140 A; B; D, D 1, 3	n/a	Variances.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-170-150 A 1-3; B; C; D 3	n/a	Local ordinances.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-170-160 A; B	n/a	Conditions on approvals.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
9VAC5-170-170	n/a	Considerations for approval actions.	Replace "board" with "department" as appropriate, and amend text to reflect the code change required by statute. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Part VII, Delegation of Authority.</b>			
*9VAC5-170-180	n/a		Repeal entire section. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Part VIII, Appeal of Board [Department] Actions.</b>			
9VAC5-170-190 A	n/a	General provisions.	Replace "board" with "department" as appropriate. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
*9VAC5-170-200 A-D; F-I	n/a	Appeal procedures.	Replace "board" with "department" as appropriate, and remove reference to repealed code requirements. Needed to meet the requirements of Chapter 356. No significant impact anticipated.
<b>Part IX, Conflict of Interest.</b>			
9VAC5-170-210 A	n/a	General.	Remove reference to the "board" , to reflect the transfer of permitting authority required by statute. Needed to meet the requirements of



Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			Chapter 356. No significant impact anticipated.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

These regulation amendments meet the requirements of state law. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum requirements of state law. Any such changes would compromise the effectiveness of the regulation in protecting the health and welfare of the public.

**Family Impact**

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

No family impacts are anticipated.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**Revise regulations to implement requirements for transfer of authority and requests for public hearings (Revision D22)**

**9VAC5-10-20. Terms defined.**

"Actual emissions rate" means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

"Affected facility" means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated. The term "affected facility" includes any affected source as defined in 40 CFR 63.2.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air quality" means the specific measurement in the ambient air of a particular air pollutant at any given time.

"Air quality control region" means any area designated as such in 9VAC5-20-200.

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Ambient air quality standard" means any primary or secondary standard designated as such in 9VAC5-30 (Ambient Air Quality Standards).

"Board" means the State Air Pollution Control Board or its designated representative. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "board" means the Department of Environmental Quality.

"Certified mail" means electronically certified or postal certified mail, except that this definition shall only apply to the mailing of plan approvals, permits, or certificates issued under the provisions of these regulations and only where the recipient has notified the department of the recipient's consent to receive plan approvals, permits, or certificates by electronic mail. Any provision of these regulations requiring the use of certified mail to transmit special orders or administrative orders pursuant to enforcement proceedings shall mean postal certified mail.

"Class I area" means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9VAC5-20-205.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class III area" means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9VAC5-20-205.

"Continuous monitoring system" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

"Control program" means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.
2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.
3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.
4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under 9VAC5-30 (Ambient Air Quality Standards).

"Day" means a 24-hour period beginning at midnight.

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable implementation plan.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" or "executive director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:
  - a. Using that portion of a stack which exceeds good engineering practice stack height;
  - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
  - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.
2. Subdivision 1 of this definition does not include:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;
- b. The merging of exhaust gas streams where:
  - (1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;
  - (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emissions limitation for the pollutant affected by such change in operation; or
  - (3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emissions limitation or, in the event that no emissions limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;
- c. Smoke management in agricultural or silvicultural prescribed burning programs;
- d. Episodic restrictions on residential woodburning and open burning; or
- e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"Emissions limitation" means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

"Emission standard" means any provision of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources) that prescribes an emissions limitation, or other requirements that control air pollution emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

"EPA" means the U.S. Environmental Protection Agency or an authorized representative.

"Excess emissions" means emissions of air pollutant in excess of an emission standard.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Excessive concentration" is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;
2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and
3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Existing source" means any stationary source other than a new source or modified source.

"Facility" means something that is built, installed or established to serve a particular purpose and includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.
4. Limitations and conditions that are part of an implementation plan.
5. Limitations and conditions that are part of a § 111(d) or 111(d)/129 plan.
6. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.
7. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.
8. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
9. Individual consent agreements issued pursuant to the legal authority of EPA.

"Good engineering practice" or "GEP," with reference to the height of the stack, means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;
2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under 9VAC5-80 (Permits for Stationary Sources),  
 $H_g = 2.5H$ ,  
provided the owner produces evidence that this equation was actually relied on in establishing an emissions limitation;
- b. For all other stacks,  
 $H_g = H + 1.5L$ ,  
where:  
 $H_g$  = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,  
 $H$  = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,  
 $L$  = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or
3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Initial emission test" means the test required by any regulation, permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources), control program, compliance schedule or other enforceable mechanism for determining compliance with new or more stringent emission standards or permit limitations or other emissions limitations requiring the installation or modification of air pollution control equipment or implementation of a control method. Initial emission tests shall be conducted in accordance with 9VAC5-40-30.

"Initial performance test" means the test required by (i) 40 CFR Part 60 for determining compliance with standards of performance, or (ii) a permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources) for determining initial compliance with permit limitations. Initial performance tests shall be conducted in accordance with 9VAC5-50-30 and 9VAC5-60-30.

"Isokinetic sampling" means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

"Locality" means a city, town, county or other public body created by or pursuant to state law.

"Mail" means electronic or postal delivery.

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan and designated as such in 9VAC5-20-203.

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Monitoring device" means the total equipment used to measure and record (if applicable) process parameters.

"Nearby" as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and:

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile); and
2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed two miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

"Nonattainment area" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9VAC5-20-204.

"One hour" means any period of 60 consecutive minutes.

"One-hour period" means any period of 60 consecutive minutes commencing on the hour.

"Organic compound" means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PM<sub>10</sub> emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"Performance test" means a test for determining emissions from new or modified sources.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in 9VAC5-20-204 for a particular pollutant and designated as such in 9VAC5-20-205.

"Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007.02 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.
2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60.
3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

"Regional director" means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

"Regulation of the board" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"Regulations for the Control and Abatement of Air Pollution" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials publication, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)" (see 9VAC5-20-21).

"Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with § 111(d)(1) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § 111(d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Section 111(d)/129 plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with §§ 111(d)(2) and 129(b)(3) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Shutdown" means the cessation of operation of an affected facility for any purpose.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on-site construction of the stack; or
2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of Hg (29.92 inches of Hg).

"Standard of performance" means any provision of 9VAC5-50 (New and Modified Stationary Sources) which prescribes an emissions limitation or other requirements that control air pollution emissions.

"Startup" means the setting in operation of an affected facility for any purpose.

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9VAC5-170-160; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to 9VAC5-80 (Permits for Stationary Sources).

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"These regulations" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Total suspended particulate" or "TSP" means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication, "Evaporative Loss from Floating-Roof Tanks" (see 9VAC5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9VAC5-20-201.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in American Petroleum Institute publication, "Evaporative Loss from Floating-Roof Tanks" (see 9VAC5-20-21).

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

- a. Methane;
- b. Ethane;
- c. Methylene chloride (dichloromethane);
- d. 1,1,1-trichloroethane (methyl chloroform);
- e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
- f. Trichlorofluoromethane (CFC-11);
- g. Dichlorodifluoromethane (CFC-12);
- h. Chlorodifluoromethane (H CFC-22);
- i. Trifluoromethane (H FC-23);
- j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);
- k. Chloropentafluoroethane (CFC-115);
- l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- m. 1,1,1,2-tetrafluoroethane (HFC-134a);
- n. 1,1-dichloro 1-fluoroethane (HCFC-141b);
- o. 1-chloro 1,1-difluoroethane (HCFC-142b);
- p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
- q. Pentafluoroethane (HFC-125);
- r. 1,1,2,2-tetrafluoroethane (HFC-134);
- s. 1,1,1-trifluoroethane (HFC-143a);
- t. 1,1-difluoroethane (HFC-152a);
- u. Parachlorobenzotrifluoride (PCBTF);
- v. Cyclic, branched, or linear completely methylated siloxanes;
- w. Acetone;
- x. Perchloroethylene (tetrachloroethylene);
- y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
- z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
- aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
- bb. Difluoromethane (HFC-32);
- cc. Ethylfluoride (HFC-161);
- dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
- ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);
- ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);
- gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);
  - ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
  - jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
  - kk. Chlorofluoromethane (HCFC-31);
  - ll. 1 chloro-1-fluoroethane (HCFC-151a);
  - mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
  - nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ( $C_4F_9OCH_3$  or HFE-7100);
  - oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ( $(CF_3)_2CFCF_2OCH_3$ );
  - pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ( $C_4F_9OC_2H_5$  or HFE-7200);
  - qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ( $(CF_3)_2CFCF_2OC_2H_5$ );
  - rr. Methyl acetate;
  - ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ( $n-C_3F_7OCH_3$ ) (HFE-7000);
  - tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);
  - uu. 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);
  - vv. methyl formate ( $HCOOCH_3$ );
  - ww. 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
  - xx. propylene carbonate;
  - yy. dimethyl carbonate;
  - zz. trans-1,3,3,3-tetrafluoropropene;
  - aaa.  $HCF_2OCF_2H$  (HFE-134);
  - bbb.  $HCF_2OCF_2OCF_2H$  (HFE-236cal2);
  - ccc.  $HCF_2OCF_2CF_2OCF_2H$  (HFE-338pcc13);
  - ddd.  $HCF_2OCF_2OCF_2CF_2OCF_2H$  (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180));
  - eee. trans 1-chloro-3,3,3-trifluoroprop-1-ene;
  - fff. 2,3,3,3-tetrafluoropropene;
  - ggg. 2-amino-2-methyl-1-propanol;
  - hhh. t-butyl acetate;
  - iii. 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; and
  - jjj. Perfluorocarbon compounds that fall into these classes:
    - (1) Cyclic, branched, or linear, completely fluorinated alkanes;
    - (2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;
    - (3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and
    - (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of 9VAC5-40-30 or 9VAC5-50-30, as applicable. Where such a method also

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly reactive compounds in the emissions of the source.

4. Exclusion of the compounds listed in subdivision 1 of this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

5. Reserved.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

Part I

Certain Permit Actions Before the Board Department

**9VAC5-80-5. Definitions.**

A. For the purpose of applying this chapter in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the meaning given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units subject to this chapter (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, 111(d) or 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

2. Any term or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program. However, those terms or conditions designated as state-only enforceable shall not be applicable federal requirements.

3. Any emission standard, alternative emission standard, alternative emissions limitation, equivalent emissions limitation or other requirement established pursuant to § 112 or 129 of the federal Clean Air Act as amended in 1990.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.
8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.
10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.
11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a federal operating permit.
12. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of Part II of this chapter.
13. Any standard or other requirement under § 126(a)(1) and (c) of the federal Clean Air Act.

~~"Board" means, for the purposes of this chapter, the Department of Environmental Quality. "Board" shall mean the State Air Pollution Control Board only for the purposes of granting direct consideration of permit actions as provided in 9VAC5-80-25 and granting requests for public hearings to contest permit actions as provided in 9VAC5-80-35.~~

"Controversial permit" means an air permitting action for which a public hearing has been granted pursuant 9VAC5-80-35. "Controversial permit" also means an air permitting action where a public hearing is required for (i) the construction of a new major source or for a major modification to an existing source, (ii) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iv) a new fossil fuel-fired compressor station facility used to transport natural gas, or (v) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions (unless expressly designated as state-only enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.
4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, 111(d) or 129 of the federal Clean Air Act.
5. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.
6. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:
  - a. The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.
  - b. The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.
  - c. The operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."
  - d. The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.
  - e. The permit in question was issued only after adequate and timely notice and opportunity for comment by EPA and the public.
7. Limitations and conditions in a regulation of the board or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
8. Individual consent agreements that EPA has legal authority to create.

"Federal hazardous air pollutant new source review (NSR) program" means a program for the preconstruction review and approval of the construction, reconstruction or modification of any stationary source in accordance with regulations specified in subdivisions 1 through 3 of this definition and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act. Any permit issued under this program is a major NSR permit.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E.

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit.

"Federal hazardous air pollutant new source review (NSR) permit" means a permit issued under the federal hazardous air pollutant new source review program.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of Part II of this chapter.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II of this chapter.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of Part II of this chapter. The minor NSR program may also be used to implement the terms and conditions designated as state-only enforceable; however, those terms and conditions shall not be applicable federal requirements.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations, and (iii) Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II of this chapter. The NSR program may also be used to implement the terms and conditions designated as state-only enforceable; however, those terms and conditions shall not be applicable federal requirements.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2000 et seq.) of Part II of this chapter. Any permit issued under this program is a major NSR permit.

"Nonattainment major new source review (NSR) permit" means a permit issued under the nonattainment major new source review program.

"Permit action" means the activities associated with, and preliminary to, a decision of the ~~board~~ department to approve, approve with conditions, or disapprove permit applications; actions to amend or modify permit terms or conditions; actions to renew, reopen, invalidate, suspend, revoke or enforce permit terms or conditions. The term "permit action" does not include actions to combine permit terms and conditions, provided there are no changes to any permit term or condition.

"Prevention of Significant Deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of Part II of this chapter. Any permit issued under this program is a major NSR permit.

"Prevention of Significant Deterioration permit" means a permit issued under the Prevention of Significant Deterioration program.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information (exclusive of confidential information) for a new stationary source or project, the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the ~~board~~ department regarding the permit application.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007 of the Administrative Process Act, held to afford people an opportunity to submit views and data relative to a matter on which a decision of the ~~board~~ department is pending.

"Public participation process" means any element of a ~~board~~ department decision-making process that provides an opportunity to submit views and data relative to a matter on which a decision of the ~~board~~ department is pending.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of Part II of this chapter.

**9VAC5-80-15. Applicability.**

A. The provisions of this part, unless specified otherwise, shall apply to only permit actions subject to a public ~~participation process~~ comment period.

B. The provisions of this part do not apply to the appeal of the promulgation of regulations ~~or variances~~. Appeals of the promulgation of regulations ~~and variances~~ shall be pursued under § 10.1-1317 of the Virginia Air Pollution Control Law and § 2.2-4026 of the Administrative Process Act.

C. The provisions of this part do not apply to the appeal of case decisions and other actions or inactions of the board or the department.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-25. Direct consideration of permit actions by the board. (Repealed.)**

~~A. During the public hearing comment period on a permit action, interested persons may request that the board directly consider the permit action pursuant to the requirements of this section. The public participation process requirements for the permit programs subject to this section are specified in subdivisions 1 through 4 of this subsection.~~

- ~~1. 9VAC5-80-1170 for the minor new source review (minor NSR) program.~~
- ~~2. 9VAC5-80-1460 for the federal hazardous air pollutant new source review (NSR) program.~~
- ~~3. 9VAC5-80-1775 for the Prevention of Significant Deterioration (PSD) program.~~
- ~~4. 9VAC5-80-2070 for the nonattainment major new source review (NSR) program.~~

~~B. Requests for board consideration shall contain the following information:~~

- ~~1. The name, mailing address, and telephone number of the requester;~~
- ~~2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);~~
- ~~3. The reason why board consideration is requested;~~
- ~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, amendment, or revocation of the permit in question; and~~
- ~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.~~

~~C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for board consideration filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant board consideration after the public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:~~

- ~~1. That there is a significant public interest in the issuance, denial, amendment, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for board consideration;~~
- ~~2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, amendment, or revocation of the permit in question; and~~
- ~~3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the Virginia Air Pollution Control Law, federal law or any regulation promulgated thereunder.~~

~~D. Either the director or a majority of the board members, acting independently, may request a meeting of the board to be convened within 20 days of the director's decision pursuant to subsection C of this section in order to review such decision and determine by a majority vote of the board whether or not to grant board consideration, or to delegate the permit to the director for the director's decision. For purposes of this subsection, if a board meeting is held via electronic communication, the meeting shall be held in compliance with the provisions of § 2.2-3708 of the Virginia Freedom of Information Act, except that a quorum of the board is not required to be~~

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

~~physically assembled at one primary or central meeting location. Discussions of the board held via such electronic communication means shall be specifically limited to a (i) review of the director's decision pursuant to subsection C of this section, (ii) determination of the board whether or not to grant board consideration, or (iii) delegation of the permit to the director for the director's decision. No other matter of public business shall be discussed or transacted by the board during any such meeting held via electronic communication.~~

~~E. The director shall, forthwith, notify by mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny board consideration.~~

~~F. In addition to subsections C, D, and E of this section, the director may, in his discretion, submit a permit action to the board for its consideration.~~

~~G. After the close of the public hearing comment period, the board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the board or the director.~~

~~H. Persons who commented during the public comment period shall be afforded an opportunity at the board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the department for the board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the board.~~

~~I. In making its decision, the board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the board meeting, (iii) the comments and recommendation of the department, and (iv) the agency files. When the decision of the board is to adopt the recommendation of the department, the board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the board varies from the recommendation of the department, the board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the board. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.~~

**9VAC5-80-35. Public hearings to contest permit actions for controversial permits.**

A. During the public comment period on a permit action in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing on the permit action pursuant to the requirements of this section to contest such action or the terms and conditions thereof. The public participation process requirements for the permit programs subject to this section are specified in subdivisions 1 and 2 of this subsection.

1. 9VAC5-80-270 and 9VAC5-80-670 for the federal (Title V) operating permit program.
2. 9VAC5-80-1020 for the state operating permit program.

B. Requests for a public hearing shall contain the following information:

1. The name, and postal mailing or email address, and telephone number of the requester;
2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person); for the purposes of this requirement, a "person" includes an unincorporated association;
3. The reason why a public hearing is requested for the request for a public hearing;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or ~~preliminary~~ tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, amendment, modification, or revocation of the permit in question; and
5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

C. Upon completion of the public comment period on a permit action in accordance with subsection A of this section, the director shall review all timely requests for public hearing filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, amendment, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;
2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, amendment, modification, or revocation of the permit in question; and
3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the Virginia Air Pollution Control Law, federal law or any regulation promulgated thereunder.

~~D. Either the director or a majority of the board members, acting independently, may request a meeting of the board to be convened within 20 days of the director's decision pursuant to subsection C of this section in order to review such decision and determine by a majority vote of the board whether or not to grant a public hearing. For purposes of this subsection, if a board meeting is held via electronic communication, the meeting shall be held in compliance with the provisions of § 2.2-3708 of the Virginia Freedom of Information Act, except that a quorum of the board is not required to be physically assembled at one primary or central meeting location. Discussions of the board held via such electronic communication means shall be specifically limited to a (i) review of the director's decision pursuant to subsection C of this section, (ii) determination of the board whether or not to grant a public hearing, or (iii) delegation of the permit to the director for the director's decision. No other matter of public business shall be discussed or transacted by the board during any such meeting held via electronic communication.~~

~~E.~~ The director shall, forthwith, notify by email or mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

~~F.~~ E. In addition to subsections ~~C, D, and E~~ C and D of this section, the director may, in the director's discretion, convene a public hearing on a permit action.

~~G.~~ F. If a ~~determination is made to hold a public hearing~~ the request for a public hearing is granted, the director shall schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice ~~required by subsection E of this section~~ of the decision to grant the public hearing.

~~H.~~ G. The director shall cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

~~I. The director may, on the director's own motion or at the request of the applicant or permittee, for good cause shown, reschedule the date of the public hearing. In the event the director reschedules the date for the public hearing after notice has been published, the director shall, or require the applicant to, provide reasonable notice of the new date of the public hearing. Such notice shall be published once in the same newspaper where the original notice was published.~~

~~J. Public hearings held pursuant to these procedures may be conducted by (i) the board at a regular or special meeting of the board, or (ii) one or more members of the board. A member of the board shall preside over the public hearing.~~

~~K. The presiding board member shall have the authority to maintain order, preserve the impartiality of the decision process, and conclude the hearing process expeditiously. The presiding board member, in order to carry out his responsibilities under this subsection, is authorized to exercise the following powers, including but not limited to:~~

- ~~1. Prescribing the methods and procedures to be used in the presentation of factual data, arguments, and proof orally and in writing including the imposition of reasonable limitations on the time permitted for oral testimony;~~
- ~~2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive presentation of them;~~
- ~~3. Ruling on procedural matters; and~~
- ~~4. Acting as custodian of the record of the public hearing causing all notices and written submittals to be entered in it.~~

~~L. The public comment period will remain open for 15 days after the close of the public hearing if required by § 10.1-1307.01 of the Code of Virginia.~~

~~M. When the public hearing is conducted by less than a quorum of the board, the department shall, promptly after the close of the public hearing comment period, make a report to the board.~~

~~N. After the close of the public hearing comment period, the board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the board or the director.~~

~~O. When the public hearing was conducted by less than a quorum of the board, persons who commented during the public comment period shall be afforded an opportunity at the board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the department for the board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the board.~~

~~P. In making its decision, the board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the board meeting, (iii) the comments and recommendation of the department, and (iv) the agency files. When the decision of the board is to adopt the recommendation of the department, the board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the board varies from the recommendation of the department, the board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the board. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.~~

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-37. Notification of pending controversial permits by the department to the board.**

At each regular meeting of the board, the department will provide an overview and update regarding any controversial permits pending before the department. Immediately after such presentation by the department, the board will have an opportunity to respond to the department's presentation and provide commentary regarding such pending permits.

**9VAC5-80-45. Additional public hearing for controversial permits.**

A. Before rendering a final decision on a controversial permit, the department shall hold an additional public hearing in accordance with subdivisions 1 through 3 of this subsection except as provided in subdivision 4 of this subsection:

1. Publish a summary of public comments received during the applicable public comment period and public hearing.
2. Publish responses to the public comment summary.
3. Hold a public hearing for the controversial permit for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at this public hearing for controversial permits.
4. Subdivisions 1 through 3 of this subsection shall not apply to controversial permits where no public comments were received at a public hearing or in writing during the applicable public comment period. These actions shall proceed with a final determination in accordance with the subsection B of this section and the applicable permit program regulations.

B. In making its decision, the department shall consider (i) the verbal and written comments received during the public comment period and public hearing made part of the record, (ii) comments made at the additional public hearing held to address the department's summary of comments as provided in subsection A of this section, (iii) commentary of the board, and (iv) the agency files.

**9VAC5-80-50. Applicability.**

Article 1

Federal Operating Permits for Stationary Sources

A. Except as provided in subsection C of this section, the provisions of this article apply to the following stationary sources:

1. Any major source.
2. Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the federal Clean Air Act.
3. Any source, including an area source, subject to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act.
4. Any affected source or any portion of it not subject to Article 3 (9VAC5-80-360 et seq.) of this part.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Any source that would be subject to this article solely because it is subject to the provisions of 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters), as prescribed in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Any source that would be subject to this article solely because it is subject to the provisions of 40 CFR 61.145, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos, Standard for Demolition and Renovation), as prescribed in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5 Chapter 60.

3. Any source that would be subject to this article solely because it is subject to regulations or requirements concerning prevention of accidental releases under § 112(r) of the federal Clean Air Act.

4. Any emissions unit that is determined to be shutdown under the provisions of 9VAC5-20-220.

D. Sources shall be deferred from initial applicability as follows:

1. Area sources subject to this article under subdivision A 2 or A 3 of this section shall be deferred from the obligation to obtain a permit under this article except as follows:

a. In cases for which EPA has promulgated a standard under § 111 or § 112 and has declared that the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

b. In cases for which EPA has promulgated a standard under § 111 or § 112 after July 21, 1992, and has failed to declare whether the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

2. The following sources shall not be deferred from the obligation to obtain a permit under this article:

a. Major sources.

b. Solid waste incineration units subject to the provisions of 9VAC5 Chapter 40 (9VAC5-40-10 et seq.) and 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) as adopted pursuant to § 129(e) of the federal Clean Air Act.

3. Any source deferred under subdivision 1 of this subsection may apply for a permit. The ~~board~~ department may issue the permit if the issuance of the permit does not interfere with the issuance of permits for sources that are not deferred under this section or otherwise interfere with the implementation of this article.

E. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this article by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

F. Particulate matter emissions shall be used to determine the applicability of this article to major sources only if particulate matter (PM<sub>10</sub>) emissions cannot be quantified in a manner acceptable to the ~~board~~ department.

**9VAC5-80-60. Definitions.**

A. For the purpose of Regulations for the Control and Abatement of Air Pollution and subsequent amendments, or any orders issued by the ~~board~~ department, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Affected source" means a source that includes one or more affected units.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Part 72, 73, 75, 76, 77 or 78.

"Allowable emissions" means the emission rates of a stationary source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

- a. Applicable emission standards.
- b. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.
- c. Any other applicable emission limitation, including those with a future compliance date.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future effective compliance dates):

- a. Any standard or other requirement provided for in the implementation plan, including any source-specific provisions such as consent agreements or orders.
- b. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to the state operating permit program, except for terms or conditions derived from applicable state requirements.
- c. Any standard or other requirement prescribed under the Regulations for the Control and Abatement of Air Pollution, particularly the provisions of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources), adopted pursuant to requirements of the federal Clean Air Act or under § 111, 112 or 129 of the federal Clean Air Act.
- d. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
- e. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or the Regulations for the Control and Abatement of Air Pollution.
- f. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
- g. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.
- h. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.
- i. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.
- j. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1700 et seq.) of this part.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Applicable requirement" means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

- a. Any standard or other requirement prescribed by any regulation of the board that is not included in the definition of applicable federal requirement.
- b. Any regulatory provision or definition directly associated with or related to any of the specific state requirements listed in this definition.

"Area source" means any stationary source that is not a major source. For purposes of this article, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Complete application" means an application that contains all the information required pursuant to 9VAC5-80-80 and 9VAC5-80-90 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the ~~board~~ department from requesting or accepting additional information.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this regulation, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program. Whenever the term "designated representative" is used in this regulation, the term shall be construed to include the alternate designated representative.

"Draft permit" means the version of a permit for which the ~~board~~ department offers public participation under 9VAC5-80-270 or affected state review under 9VAC5-80-290.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in 40 CFR Part 72.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited, to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.
4. Limitations and conditions that are part of an approved implementation plan.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.

6. Limitations and conditions that are part of a state operating permit issued under regulations approved by the EPA into the implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that the EPA has legal authority to create.

"Final permit" means the version of a permit issued by the ~~board~~ department under this article that has completed all review procedures required by 9VAC5-80-270 and 9VAC5-80-290.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-120.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Insignificant activity" means any emission unit listed in 9VAC5-80-720 A, any emissions unit that meets the emissions criteria described in 9VAC5-80-720 B, or any emissions unit that meets the size or production rate criteria in 9VAC5-80-720 C.

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

- (1) Coal cleaning plants (with thermal dryers).
- (2) Kraft pulp mills.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- (3) Portland cement plants.
- (4) Primary zinc smelters.
- (5) Iron and steel mills.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric, sulfuric, or nitric acid plants.
- (10) Petroleum refineries.
- (11) Lime plants.
- (12) Phosphate rock processing plants.
- (13) Coke oven batteries.
- (14) Sulfur recovery plants.
- (15) Carbon black plants (furnace process).
- (16) Primary lead smelters.
- (17) Fuel conversion plant.
- (18) Sintering plants.
- (19) Secondary metal production plants.
- (20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).
- (21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (23) Taconite ore processing plants.
- (24) Glass fiber processing plants.
- (25) Charcoal production plants.
- (26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (27) Any other stationary source category regulated under § 111 or § 112 of the federal Clean Air Act for which the administrator has made an affirmative determination under § 302(j) of the federal Clean Air Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NO<sub>x</sub> requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, lack of or poor preventative maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with 9VAC5-80-10 or Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1700 et seq.) or Article 9 (9VAC5-80-2000 et seq.) of this part, promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Permit," unless the context suggests otherwise, means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

"Permit modification" means a revision to a permit issued under this article that meets the requirements of 9VAC5-80-210 on minor permit modifications, 9VAC5-80-220 on group processing of minor permit modifications, or 9VAC5-80-230 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9VAC5-80-210, 9VAC5-80-220 or 9VAC5-80-230 or any administrative permit amendment that meets the requirements of 9VAC5-80-200.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Proposed permit" means the version of a permit that the ~~board~~ department proposes to issue and forwards to the administrator for review in compliance with 9VAC5-80-290.

"Regulated air pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound.
- b. Any pollutant for which an ambient air quality standard has been promulgated.
- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
- d. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.
- e. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.
- f. Any pollutant subject to an applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Research and development facility" means all the following as applied to any stationary source:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or into refining and improving existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge.
- b. The source is operated under the close supervision of technically trained personnel.
- c. The source is not engaged in the manufacture of products in any manner inconsistent with subdivision a (i) or (ii) of this definition.

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Responsible official" means one of the following:

- a. For a business entity, such as a corporation, association or cooperative:

- (1) The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision making functions for the business entity, or

- (2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the ~~board~~ department;

- b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

- c. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

- d. For affected sources:

- (1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and

- (2) The designated representative or any other person specified in this definition for any other purposes under this article.

"State enforceable" means all limitations and conditions which are enforceable by the ~~board~~ department, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9VAC5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21). At the request of the applicant, any research and development facility may be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or § 112(g) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in 40 CFR 61.07; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

**9VAC5-80-70. General.**

A. No permit may be issued pursuant to this article until the article has been approved by the administrator, whether full, interim, partial, for federal delegation purposes, or otherwise.

B. If requested in the application for a permit or permit renewal submitted pursuant to this article, the ~~board~~ department may combine the requirements of and the permit for a source subject to the state operating permit program with the requirements of and the permit for a source subject to this article provided the application contains the necessary information required for a permit under the state operating permit program.

C. For the purpose of this article, the phrase "Regulations for the Control and Abatement of Air Pollution" means 9VAC5 Chapter 10 (9VAC5-10-10 et seq.) through 9VAC5 Chapter 80 (9VAC5-80-10 et seq.). For purposes of implementing and enforcing those provisions of this article associated with applicable federal requirements as well as those provisions of this article intended to implement Title V of the federal Clean Air Act, the phrase "Regulations for the Control and Abatement of Air Pollution" means only those provisions that have been approved by EPA as part of the implementation plan or otherwise have been approved by or found to be acceptable by EPA for the purpose of implementing requirements of the federal Clean Air Act. For the purpose of this article, terms and conditions relating to applicable federal requirements shall be derived only from provisions that qualify as applicable federal requirements.

**9VAC5-80-80. Applications.**

A. A single application is required identifying each emission unit subject to this article. The application shall be submitted according to the requirements of this section, 9VAC5-80-90 and procedures approved by the ~~board~~ department. Where several units are included in one stationary source, a single application covering all units in the source shall be submitted. A separate application is required for each stationary source subject to this article.

B. For each stationary source, the owner shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. 1. The owner of a stationary source applying for a permit under this article for the first time shall submit an application within 12 months after the source becomes subject to this article, except that stationary sources not deferred under 9VAC5-80-50 D shall submit their applications on a schedule to be determined by the department but no later than 12 months following the effective date of approval of this article by the administrator, to include approval for federal delegation purposes.

2. The owner of a source subject to the requirements of the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a permit revision

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of the new source review program.

3. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than 18 months prior to the date of permit expiration.

D. The following requirements concerning the completeness of the permit application apply to sources subject to this article:

1. To be determined complete, an application shall contain all information required pursuant to 9VAC5-80-90.

2. Applications for permit revision or for permit reopening shall supply information required under 9VAC5-80-90 only if the information is related to the proposed change.

3. Within 60 days of receipt of the application, the ~~board~~ department shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the ~~board~~ department shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the ~~board~~ department does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the ~~board~~ department finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under the new source review program.

8. Upon notification by the ~~board~~ department that the application is complete or after 60 days following receipt of the application by the ~~board~~ department, the applicant shall submit three additional copies of the complete application to the ~~board~~ department.

E. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. The following requirements concerning the application shield apply to sources subject to this article:

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this article until the ~~board~~ department takes final action on the application under 9VAC5-80-150.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this article.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either 9VAC5-80-210 F or 9VAC5-80-220 E, the failure of the source to have a permit modification or the operation of the source without a permit

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

modification shall not be a violation of this article until the ~~board~~ department takes final action on the application under 9VAC5-80-150.

4. If the source notifies the ~~board~~ department that it wants to make an operational flexibility permit change under 9VAC5-80-280 B, the failure of the source to have a permit modification or operation of the source without a permit modification for the permit change shall not be a violation of this article unless the ~~board~~ department notifies the source that the change is not a permit change as specified in 9VAC5-80-280 B 1 a.

5. If an applicant submits a timely and complete application under this section for a permit renewal but the ~~board~~ department fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9VAC5-80-140, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subdivisions 1 and 5 (ii) of this subsection shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the ~~board~~ department any additional information identified as being needed to process the application.

G. Any application form, report, compliance certification, or other document submitted to the ~~board~~ department shall meet the requirements of 9VAC5-20-230.

**9VAC5-80-90. Application information required.**

A. The ~~board~~ department shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information as follows shall be included:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

D. Emissions-related information as follows shall be included:

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit with the following exceptions:

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level or size of the unit is deemed to be insignificant under 9VAC5-80-720 B or C shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in 9VAC5-80-720 A.

(2) Regardless of the emissions units designated in 9VAC5-80-720 A or C or the emissions levels listed in 9VAC5-80-720 B, the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination of the applicability of this article,



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- the determination or imposition of any applicable requirement or the calculation of permit fees.
- b. Emissions shall be calculated as required in the permit application form or instructions.
  - c. Fugitive emissions shall be included in the permit application to the extent quantifiable regardless of whether the source category in question is included in the list of sources contained in the definition of major source.
2. Additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part as required by the ~~board~~ department. Identification and description of all points of emissions described in subdivision 1 of this subsection in sufficient detail to establish the basis for fees and applicability of requirements of the Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act.
  3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.
  4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.
  5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
  6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.
  7. Other information required by any applicable requirement (including information related to stack height limitations required under 9VAC5-40-20 I or 9VAC5-50-20 H).
  8. Calculations on which the information in subdivisions D 1 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.
- E. Air pollution control requirements as follows shall be included:
1. Citation and description of all applicable requirements, including those covering activities deemed insignificant under Article 4 (9VAC5-80-710 et seq.) of this part.
  2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.
- F. Additional information that may be necessary to implement and enforce other requirements of the Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act or to determine the applicability of such requirements.
- G. An explanation of any proposed exemptions from otherwise applicable requirements.
- H. Additional information as determined to be necessary by the ~~board~~ department to define alternative operating scenarios identified by the source pursuant to 9VAC5-80-110 J or to define permit terms and conditions implementing operational flexibility under 9VAC5-80-280.
- I. Compliance plan as follows shall be included:
1. A description of the compliance status of the source with respect to all applicable requirements.
  2. A description as follows:
    - a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
  - c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
3. A compliance schedule as follows:
- a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
  - b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the ~~board~~ department if no specific requirement exists.
  - c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or ~~board~~ department order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.
4. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.
- J. Compliance certification information as follows shall be included:
1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.
  2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.
  3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the ~~board~~ department.
  4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.
- K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112(r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.
- L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-100. Emission caps.**

A. The ~~board~~ department may establish an emission cap for sources or emissions units applicable under this article when the applicant requests that a cap be established.

B. The criteria in subdivisions 1 through 5 of this subsection shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in the Regulations for the Control and Abatement of Air Pollution prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this article.

2. A permit issued under this article may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in the Regulations for the Control and Abatement of Air Pollution prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination of them. The emission standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

C. Using the significant modification procedures of 9VAC5-80-230, an emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subdivisions B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to the new source review program.

**9VAC5-80-110. Permit content.**

A. General information applies as follows:

1. For major sources subject to this article, the ~~board~~ department shall include in the permit all applicable requirements for all emissions units in the major source.

2. For any source other than a major source subject to this article, the ~~board~~ department shall include in the permit all applicable requirements that apply to emissions units that cause the source to be subject to this article.

3. For all sources subject to this article, the ~~board~~ department shall include in the permit applicable requirements that apply to fugitive emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

4. Each permit issued under this article shall include the elements listed in subsections B through N of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.
2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
3. If applicable requirements contained in the Regulations for the Control and Abatement of Air Pollution allow a determination of an alternative emission limit at a source, equivalent to that contained in the Regulations for the Control and Abatement of Air Pollution, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

C. Each permit shall contain terms and conditions identifying equipment specifications and operating parameters in accordance with the following:

1. Each permit shall contain terms and conditions setting out the following elements identifying equipment specifications and operating parameters:
  - a. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.
  - b. Specifications for air pollution control equipment installed or to be installed.
  - c. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved.
2. The information on any specification required in subdivisions 1 a and b of this subsection may be included in the permit for informational purposes only and does not form an enforceable term or condition of the permit except in the following cases:
  - a. The specification is an applicable federal requirement.
  - b. The specification is derived from and necessary to enforce an applicable federal requirement.
  - c. The operation of the source contrary to the specification would violate an applicable federal requirement.
  - d. The owner voluntarily takes the specification as a state enforceable term or condition of the permit pursuant to 9VAC5-80-300.

D. Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specific

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

monitoring or testing is adequate to assure compliance at least to the same extent as the applicable requirements relating to monitoring or testing that are not included in the permit as a result of such streamlining.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subdivision F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subdivision.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. Recordkeeping and reporting requirements apply as follows:

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

- (1) The date, place as defined in the permit, and time of sampling or measurements.
- (2) The dates analyses were performed.
- (3) The company or entity that performed the analyses.
- (4) The analytical techniques or methods used.
- (5) The results of such analyses.
- (6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 9VAC5-80-80 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The board department shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Each permit shall contain terms and conditions with respect to enforcement that state the following:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.
  2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
  3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
  4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in subsection L of this section, 9VAC5-80-240 and 9VAC5-80-260. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
  5. The permit does not convey any property rights of any sort, or any exclusive privilege.
  6. The permittee shall furnish to the ~~board~~ department, within a reasonable time, any information that the ~~board~~ department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the ~~board~~ department copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the ~~board~~ department along with a claim of confidentiality.
- H. Each permit shall contain a condition setting out the requirement to pay permit fees consistent with the fee schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part.
- I. Emissions trading information as follows shall be included:
1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.
  2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that the Regulations for the Control and Abatement of Air Pollution provide for trading such increases and decreases without a case-by-case approval of each emissions trade:
    - a. All terms and conditions required under this section except subsection N of this section shall be included to determine compliance.
    - b. The permit shield described in 9VAC5-80-140 shall extend to all terms and conditions that allow such increases and decreases in emissions.
    - c. The owner shall meet all applicable requirements including the requirements of this article.
- J. Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

approved by the ~~board~~ department. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.
2. The permit shield described in 9VAC5-80-140 shall extend to all terms and conditions under each such operating scenario.
3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this article.

K. Consistent with subsections E and F of this section, each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the ~~board~~ department shall contain a certification by a responsible official that meets the requirements of 9VAC5-80-80 G.

2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the ~~board~~ department to perform the following:

- a. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of the permit.
- b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.
- c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.
- d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with 9VAC5-80-90 I.

4. Progress reports consistent with an applicable schedule of compliance and 9VAC5-80-90 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the ~~board~~ department. Such progress reports shall contain the following:

- a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.
- b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

- a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the ~~board~~ department) of submissions of compliance certifications.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under subsection E of this section. If necessary, the owner or operator shall also identify any other material information that must be included in the certification to comply with § 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information.

(3) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in subdivision 5 c (2) of this subsection. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred.

(4) Such other facts as the ~~board~~ department may require to determine the compliance status of the source.

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the ~~board~~ department.

6. Such other provisions as the ~~board~~ department may require.

L. Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened by the ~~board~~ department if additional applicable federal requirements become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to 9VAC5-80-80 F.

2. The permit shall be reopened if the ~~board~~ department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the ~~board~~ department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

4. The permit shall not be reopened by the ~~board~~ department if additional applicable state requirements become applicable to a major source prior to the expiration date established under subsection D of this section.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

M. The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with the Regulations for the Control and Abatement of Air Pollution, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. Federal enforceability requirements apply as follows:

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subdivision 2 of this subsection.
2. The ~~board~~ department shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of 9VAC5-80-290 concerning review of proposed permits by EPA and draft permits by affected states.
3. The ~~board~~ department may specifically designate as state enforceable any applicable state requirement that has been submitted to the administrator for review to be approved as part of the implementation plan and that has not yet been approved. The permit shall specify that the provisions will become federally enforceable upon approval of the provisions by the administrator and through an administrative permit amendment.

**9VAC5-80-120. General permits.**

A. Requirements for board issuance of a general permit regulation apply as follows:

1. The board may issue a general permit regulation covering a source category containing numerous similar sources that meet the following criteria:
  - a. All sources in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.
  - b. Sources shall not be subject to case-by-case standards or requirements.
  - c. Sources shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.
2. Sources subject to a general permit shall comply with all requirements applicable to other permits issued under this article.
3. General permits permit regulations shall (i) identify the criteria by which sources may qualify for the general permit and (ii) describe the process to use in applying for the general permit.
4. The board shall not issue a general permit regulation until the requirements concerning notice and opportunity for public participation under 9VAC5-80-270 and affected state and EPA review under 9VAC5-80-290 have been met. However, requirements concerning content of the notice shall replace those specified in 9VAC5-80-270 C and shall include, but not be limited to, the following:
  - a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit regulation.
  - b. The criteria to be used in determining which sources qualify for the general permit.
  - c. A brief description of the source category that the department believes qualifies for the general permit including, but not limited to, an estimate of the number of individual sources in the category.
  - d. A narrative statement of the estimated air quality impact contributed by the source category covered by the general permit including information regarding specific

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable.

e. A brief description of the application process to be used by sources to request coverage under the general permit regulation.

f. A brief description of the comment procedures required by 9VAC5-80-270.

g. A brief description of the procedures to be used to request a hearing as required by 9VAC5-80-270 or the time and place of the public hearing if the ~~board~~ department determines to hold a hearing under ~~9VAC5-80-270 E 9~~ 9VAC5-80-35 E.

B. Application requirements for a general permit apply as follows:

1. Sources that would qualify for a general permit shall apply to the ~~board~~ department for coverage under the terms of the general permit regulation. Sources that do not qualify for a general permit shall apply for coverage under a permit issued under the other provisions of this article.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Sources that become subject to the general permit after it is issued to other sources in the category addressed by the general permit shall file an application with the ~~board~~ department using the application process described in the general permit. The ~~board~~ department shall issue the general permit to the source if it determines that the source meets the criteria set out in the general permit.

C. Conditions of issuance of a general permit apply as follows:

1. The ~~board~~ department shall grant the conditions and terms of the general permit to sources that meet the criteria set out in the general permit covering the specific source category.

2. The issuance of a permit to a source covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-270 and affected state and EPA review under 9VAC5-80-290.

3. A response to each general permit application may not be provided. The general permit regulation may specify a reasonable time period after which a source that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Sources covered under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the source is covered by the general permit.

5. Provided the letter, certificate, summary or other document is located at the source, the source may not be required to have a copy of the general permit. In this case, a copy of the general permit shall be retained by the ~~board~~ department or at the source's corporate headquarters in the case of franchise operations.

D. Enforcement conditions apply as follows:

1. Regardless of the permit shield provisions in 9VAC5-80-140, the source shall be subject to enforcement action under 9VAC5-80-260 for operation without a permit issued under this article if the source is later determined by the ~~board~~ department or the administrator not to qualify for the conditions and terms of the general permit.

2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-130. Temporary sources.**

A. The ~~board~~ department may issue a single permit authorizing emissions from similar operations by the same owner at multiple temporary locations.

B. The operation shall be temporary and involve at least one change of location during the term of the permit.

C. Permits for temporary sources shall include the following:

1. Conditions that assure compliance with all applicable requirements at all authorized locations.
2. A condition that the owner shall notify the ~~board~~ department not less than 15 days in advance of each change in location.
3. Conditions that ensure compliance with all other provisions of this article.

**9VAC5-80-140. Permit shield.**

A. The ~~board~~ department shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.
2. Any other applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Nothing in this section or in any permit issued under this article shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.
2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.
3. The ability to obtain information from a source by the (i) administrator pursuant to § 114 of the federal Clean Air Act (inspections, monitoring, and entry); or (ii) board department pursuant to § 10.1-1307.3 or § 10.1-1315 of the Virginia Air Pollution Control Law ~~or (iii) department pursuant to § 10.1-1307.3 of the Virginia Air Pollution Control Law.~~

**9VAC5-80-150. Action on permit application.**

A. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The ~~board~~ department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 9VAC5-80-120.
2. Except for modifications qualifying for minor permit modification procedures under 9VAC5-80-210 or 9VAC5-80-220, the ~~board~~ department has complied with the requirements for public participation under 9VAC5-80-270.
3. The ~~board~~ department has complied with the requirements for notifying and responding to affected states under 9VAC5-80-290.
4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Article 2 (9VAC5-80-310 et seq.) of this part, and the requirements of this article.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

5. The administrator has received a copy of the proposed permit and any notices required under 9VAC5-80-290 A and 9VAC5-80-290 B and has not objected to issuance of the permit under 9VAC5-80-290 C within the time period specified therein.

B. Except for permit revisions, as required by the provisions of 9VAC5-80-200, 9VAC5-80-210, 9VAC5-80-220 or 9VAC5-80-230, the ~~board~~ department shall take final action on each permit application (including a request for permit modification or renewal) no later than 18 months after a complete application is received by the ~~board~~ department, except in cases where a public hearing to provide the opportunity for interested persons to contest the application is granted pursuant to 9VAC5-80-35 or 9VAC5-80-45. The ~~board~~ department will review any request made under 9VAC5-80-270 E 2, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

C. Issuance of permits under this article shall not take precedence over or interfere with the issuance of preconstruction permits under the new source review program.

D. The ~~board~~ department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The ~~board~~ department shall send this statement to the administrator and to any other person who requests it.

E. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the ~~board~~ department upon request.

F. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

**9VAC5-80-160. Transfer of permits.**

A. No person shall transfer a permit from one location to another, unless authorized under 9VAC5-80-130, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9VAC5-80-200.

C. In the case of a name change of a stationary source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change and shall comply with the requirements of 9VAC5-80-200.

**9VAC5-80-170. Permit renewal and expiration.**

A. Permits being renewed shall be subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this article.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with 9VAC5-80-80.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

C. If the ~~board~~ department fails to act in a timely way on a permit renewal, the administrator may invoke his authority under § 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

**9VAC5-80-190. Changes to permits.**

A. Changes to emissions units that pertain to applicable federal requirements at a source with a permit issued under this article shall be made as specified under subsections B through D of this section and 9VAC5-80-200 through 9VAC5-80-240. Changes to emissions units that pertain to applicable state requirements at a source with a permit issued under this article shall be made as specified under subsection E of this section. Changes to a permit issued under this article and during its five-year term that pertain to applicable federal requirements may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department or administrator as specified in subsection C of this section.

B. The following requirements apply with respect to changes initiated by the permittee:

1. The permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in 9VAC5-80-200 through 9VAC5-80-230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The administrator or the ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-240.

D. Changes to permits shall not be used to extend the term of the permit.

E. The following changes apply with respect to changes at a source and applicable state requirements:

1. Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9VAC5-80-200 through 9VAC5-80-240.

2. The permittee may initiate a change pertaining only to applicable state requirements (i) if the change does not violate applicable requirements and (ii) if applicable, the requirements of the new source review program have been met.

3. Incorporation of permit terms and conditions into a permit issued under this article shall be as follows:

a. Permit terms and conditions pertaining only to applicable state requirements and issued under the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

b. Permit terms and conditions for changes to emissions units pertaining only to applicable state requirements and exempt from the requirements of the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

4. The source shall provide contemporaneous written notice to the ~~board~~ department of the change. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable state requirement that would apply as a result of the change.

5. The change shall not qualify for the permit shield under 9VAC5-80-140.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-200. Administrative permit amendments.**

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.
2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.
3. Requirement for more frequent monitoring or reporting by the permittee.
4. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-160 have been fulfilled.
5. Incorporation into the permit of the requirements of permits issued under the new source review program when the new source review program meets (i) procedural requirements substantially equivalent to the requirements of 9VAC5-80-270 and 9VAC5-80-290 that would be applicable to the change if it were subject to review as a permit modification and (ii) compliance requirements substantially equivalent to those contained in 9VAC5-80-110.
6. Change in the enforceability status from state-only requirements to federally enforceable requirements for provisions that have been approved through rulemaking by the administrator to be a part of the implementation plan.

B. Administrative permit amendment procedures shall be required for and limited to the following:

1. The ~~board~~ department shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.
2. The ~~board~~ department shall incorporate the changes without providing notice to the public or affected states under 9VAC5-80-270 and 9VAC5-80-290. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.
3. The ~~board~~ department shall submit a copy of the revised permit to the administrator.
4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The ~~board~~ department shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield provisions of 9VAC5-80-140 for amendments made pursuant to subdivision A 5 of this section.

**9VAC5-80-210. Minor permit modifications.**

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;
2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements;
3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

- a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and
- b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not Title I modifications; and

6. Are not required to be processed as a significant modification under 9VAC5-80-230 or as an administrative permit amendment under 9VAC5-80-200.

B. Notwithstanding subsection A of this section and 9VAC5-80-220 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Regulations for the Control and Abatement of Air Pollution or a federally approved program.

C. An application requesting the use of minor permit modification procedures shall meet the requirements of 9VAC5-80-90 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.
2. A suggested draft permit prepared by the applicant.
3. Certification by a responsible official, consistent with 9VAC5-80-80 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. Within five working days of receipt of a permit modification application that meets the requirements of subsection C of this section, the ~~board~~ department shall meet its obligation under 9VAC5-80-290 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The ~~board~~ department shall promptly send any notice required under 9VAC5-80-290 B 2 to the administrator. The public participation requirements of 9VAC5-80-270 shall not extend to minor permit modifications.

E. The timetable for issuance of permit modifications shall be follows:

1. The ~~board~~ department may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the ~~board~~ department that he will not object to issuance of the permit modification, whichever occurs first, although the ~~board~~ department can approve the permit modification prior to that time.
2. Within 90 days of receipt by the ~~board~~ department of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under 9VAC5-80-290 C, whichever is later, the ~~board~~ department shall do one of the following:
  - a. Issue the permit modification as proposed.
  - b. Deny the permit modification application.
  - c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.
  - d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by 9VAC5-80-290 A.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

F. The following requirements apply with respect to the ability of an owner to make minor permit modification changes:

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.
2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable federal requirements governing the change and the proposed permit terms and conditions.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. The permit shield under 9VAC5-80-140 shall not extend to minor permit modifications.

**9VAC5-80-220. Group processing of minor permit modifications.**

A. Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under 9VAC5-80-210 A.
2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in 9VAC5-80-60, or five tons per year, whichever is least.

B. An application requesting the use of group processing procedures shall meet the requirements of 9VAC5-80-90 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.
2. A suggested draft permit prepared by the applicant.
3. Certification by a responsible official, consistent with 9VAC5-80-80 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.
4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision A 2 of this section.
5. Certification, consistent with 9VAC5-80-80 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.
6. Completed forms for the ~~board~~ department to use to notify the administrator and affected states as required under 9VAC5-80-290.

C. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subdivision A 2 of this section, whichever is earlier, the ~~board~~ department promptly shall meet its obligation under 9VAC5-80-290 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The ~~board~~ department shall send any notice required



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

under 9VAC5-80-290 B 2 to the administrator. The public participation requirements of 9VAC5-80-270 shall not extend to group processing of minor permit modifications.

D. The provisions of 9VAC5-80-210 E shall apply to modifications eligible for group processing, except that the ~~board~~ department shall take one of the actions specified in 9VAC5-80-210 E 2 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under 9VAC5-80-290 C, whichever is later.

E. The provisions of 9VAC5-80-210 F shall apply to modifications eligible for group processing.

F. The permit shield under 9VAC5-80-140 shall not extend to minor permit modifications.

**9VAC5-80-230. Significant modification procedures.**

A. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under 9VAC5-80-210 or 9VAC5-80-220 or as administrative amendments under 9VAC5-80-200. Significant modification procedures shall be used for those permit modifications that:

1. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.
2. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources), or a visibility or increment analysis carried out under this chapter.
3. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:
  - a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification.
  - b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. An application for a significant permit modification shall meet the requirements of 9VAC5-80-80 and 9VAC5-80-90 for permit issuance and renewal for the modification proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.
2. A suggested draft permit prepared by the applicant.
3. Completed forms for the ~~board~~ department to use to notify the administrator and affected states as required under 9VAC5-80-290.

C. The provisions of 9VAC5-80-290 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9VAC5-80-270 shall apply to applications made under this section.

E. The ~~board~~ department shall take final action on significant permit modifications within nine months after receipt of a complete application.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

F. The owner shall not make the change applied for in the significant modification application until the modification is approved by the ~~board~~ department under subsection E of this section.

G. The provisions of 9VAC5-80-140 shall apply to changes made under this section.

**9VAC5-80-240. Reopening for cause.**

A. A permit shall be reopened and revised under any of the conditions stated in 9VAC5-80-110 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

D. Provisions for reopenings for cause by EPA shall be as follows:

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the ~~board~~ department and the permittee of such finding in writing.

2. The ~~board~~ department shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the ~~board~~ department must require the permittee to submit additional information.

3. The administrator shall review the proposed determination from the ~~board~~ department within 90 days of receipt.

4. The ~~board~~ department shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

5. If the ~~board~~ department fails to submit a proposed determination pursuant to subdivision 2 of this subsection or fails to resolve any objection pursuant to subdivision 4 of this subsection, the administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subdivisions 1 through 4 of this subsection.

b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

**9VAC5-80-250. Malfunction.**

A. In the event of a malfunction, the owner may demonstrate that the conditions of subsection B of this section are met.

B. The permittee may, through properly signed, contemporaneous operating logs, or other relevant evidence, show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.

2. The permitted facility was at the time being properly operated.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. During the period of the malfunction, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.

4. The permittee notified the ~~board~~ department of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification should include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing by any method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9VAC5-80-110 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9VAC5-20-180 C.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

**9VAC5-80-260. Enforcement.**

A. General provisions shall be as follows:

1. Pursuant to § 10.1-1322 of the Code of Virginia, failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:

a. Knowingly makes material misstatements in the permit application or any amendments of it.

b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this article.

3. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any permit for any of the grounds for revocation or termination contained in subdivision 2 of this subsection or for any other violations of the Regulations for the Control and Abatement of Air Pollution.

B. Penalties shall be as follows:

1. An owner who violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.

2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

C. Provisions for appeals shall be as follows:

1. The ~~board~~ department shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Appeal from any decision of the ~~board~~ department under subdivision 1 of this subsection may be taken pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5 Chapter 170, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.

D. The existence of a permit under this article shall constitute a defense to a violation of any applicable requirement if the permit contains a condition providing the permit shield as specified in 9VAC5-80-140 and if the requirements of 9VAC5-80-140 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this article shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or the Regulations for the Control and Abatement of Air Pollution and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. Provisions for inspections and right of entry shall be as follows:

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and 9VAC5-20-150, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this article.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

- a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and
- b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the ~~board~~ department or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the ~~board~~ department shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. The ~~board~~ department may enforce permits issued under this article through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9VAC5-20-20 and 9VAC5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

**9VAC5-80-270. Public participation.**

A. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The ~~board~~ department shall notify the public using the procedures in subsection B of this section.

B. The ~~board~~ department shall notify the public of the draft permit or draft permit modification (i) by advertisement in a newspaper of general circulation in the area where the source is located and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

C. Provisions for the content of the public notice and availability of information shall be as follows:

1. The notice shall include, but not be limited to, the following:
  - a. The source name, address and description of specific location.
  - b. The name and address of the permittee.
  - c. The name and address of the regional office processing the permit.
  - d. The activity or activities for which the permit action is sought.
  - e. The emissions change that would result from the permit issuance or modification.
  - f. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, and all relevant supporting materials, including the compliance plan.
  - g. A brief description of the comment procedures required by this section.
  - h. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the ~~board~~ director determines to hold a hearing under ~~subdivision E 3 of this section~~ 9VAC5-80-35 E.

2. Information on the permit application (exclusive of confidential information under 9VAC5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. The ~~board~~ department shall provide such notice and opportunity for participation by affected states as is provided for by 9VAC5-80-290.

E. Provisions for public hearing shall be as follows:

1. The ~~board~~ department shall provide an opportunity for a public hearing as described in subdivisions 2 through 6 of this subsection.

2. Following the initial publication of the notice required under subsection B of this section, the ~~board~~ department will receive written requests for a public hearing to contest the draft permit or draft permit modification pursuant to the requirements of 9VAC5-80-35. In order to be considered, the request shall be submitted no later than the end of the comment period. ~~Request~~ Requests for a public hearing shall contain the following information:

a. The name, ~~and postal mailing or email address and telephone number of the requester.~~ ;

b. The names and addresses of all persons for whom the requester is acting as a representative ~~(for the purposes of this requirement, an unincorporated association is a person).~~ ; for the purposes of this requirement, "person" includes an unincorporated association;

c. The reason ~~why a public hearing is requested.~~ for the request for public hearing;

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the draft permit or draft permit modification, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question. ~~;~~ and

e. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. The ~~board~~ department will review any request made under subdivision 2 of this subsection, and will take final action on the request as provided in 9VAC5-80-150 B.

F. The ~~board~~ department shall keep a record of the commenters and a record of the issues raised during the public participation process so that the administrator may fulfill the administrator's obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted. Such records shall be made available to the public upon request.

**9VAC5-80-280. Operational flexibility.**

A. The ~~board~~ department shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term or (ii) those that are not addressed or prohibited by the permit. The conditions under which the ~~board~~ department shall allow these changes to be made are specified in subsections B and C of this section, respectively.

B. The following requirements apply with respect to changes that contravene an express permit term:

1. The following general requirements apply:

a. The ~~board~~ department shall allow a change at a stationary source that changes a permit condition with the exception of the following:

(1) A Title I modification.

(2) A change that would exceed the emissions allowable under the permit.

(3) A change that would violate applicable requirements.

(4) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), record keeping, reporting, compliance schedule dates, or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The owner, ~~board~~ department and the administrator shall attach the notice described in subdivision 1 b of this subsection to their copy of the relevant permit.

d. The permit shield under 9VAC5-80-140 shall not extend to any change made pursuant to subdivision 1 of this subsection.

2. The following requirements apply with respect to emission trades within permitted facilities provided for in the Regulations for the Control and Abatement of Air Pollution:

a. With the exception of the changes listed in subdivision 1 a of this subsection, the ~~board~~ department shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where the Regulations for the Control and Abatement of Air Pollution provide for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in the Regulations for the Control and Abatement of Air Pollution authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the Regulations for the Control and Abatement of Air Pollution and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the Regulations for the Control and Abatement of Air Pollution and which provide for the emissions trade.

c. The permit shield described in 9VAC5-80-140 shall not extend to any change made under subdivision 2 of this subsection. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the Regulations for the Control and Abatement of Air Pollution.

3. Emission trades within stationary sources to comply with an emissions cap in the permit.

a. If a permit applicant requests it, the ~~board~~ department shall issue permits that contain terms and conditions, including all terms required under 9VAC5-80-110 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable federal requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The ~~board~~ department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The ~~board~~ department shall not allow a change to be made under subdivision 3 of this subsection if it is a change listed in subdivision 1 of this subsection.

c. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under 9VAC5-80-140 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. The following requirements apply with respect to changes that are not addressed or prohibited by the permit:

1. The ~~board~~ department shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are Title I modifications or are subject to requirements under Title IV.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition which is based on applicable federal requirements.

3. Sources shall provide contemporaneous written notice to the ~~board~~ department and the administrator of each change, except for changes to emissions units deemed insignificant and listed in 9VAC5-80-720 A. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under 9VAC5-80-140.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable federal requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

**9VAC5-80-290. Permit review by EPA and affected states.**

A. The following requirements apply with respect to transmission of information to the administrator:

1. The ~~board~~ department shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this article.

2. The ~~board~~ department shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. The following requirements apply with respect to review by affected states:

1. The ~~board~~ department shall give notice of each draft permit to any affected state on or before the time that the ~~board~~ department provides this notice to the public under 9VAC5-80-270, except to the extent that 9VAC5-80-210 or 9VAC5-80-220 requires the timing of the notice to be different.

2. The ~~board~~ department, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under 9VAC5-80-210 or 9VAC5-80-220), shall notify the administrator and any affected state in writing of any refusal by the ~~board~~ department to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons the ~~board~~ department will not accept a recommendation. The ~~board~~ department shall not be obligated to accept recommendations that are not based on applicable federal requirements or the requirements of this article.

C. The following requirements apply with regard to objections by EPA:

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subdivision 1 of this subsection shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.

3. Failure of the ~~board~~ department to do any of the following also shall constitute grounds for an objection:

a. Comply with subsection A or B of this section or both.

b. Submit any information necessary to review adequately the proposed permit.

c. Process the permit under the public comment procedures in 9VAC5-80-270 except for minor permit modifications.

4. If, within 90 days after the date of an objection under subdivision 1 of this subsection, the ~~board~~ department fails to revise and submit a proposed permit in response to the



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

objection, the administrator will issue or deny the permit in accordance with the requirements of 40 CFR Part 71.

D. The following requirements apply with respect to public petitions to the administrator:

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 9VAC5-80-270, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

3. If the administrator objects to the permit as a result of a petition filed under subdivision 1 of this subsection, the ~~board~~ department shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the ~~board~~ department has issued a permit prior to receipt of an objection by the administrator under subdivision 1 of this subsection, the administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 9VAC5-80-240 D 4 or D 5 a and b except in unusual circumstances, and the ~~board~~ department may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

E. No permit (including a permit renewal or modification) shall be issued by the ~~board~~ department until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

**9VAC5-80-300. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.**

A. Upon the request of an applicant, any requirement of any regulation of the board (other than any requirement that is a federal applicable requirement) may be included as an applicable state requirement in a permit issued under this article.

B. If the applicant chooses to make a request under subsection A of this section, the provisions of this article pertaining to applicable state requirements shall apply.

C. The request under subsection A of this section shall be made by including the citation and description of any applicable requirement not defined as such in this article in the permit application submitted to the ~~board~~ department under 9VAC5-80-90 E.

**9VAC5-80-360. Applicability.**

Article 3

Federal Operating Permits for Acid Rain Sources

A. Except as provided in subsection C of this section, the provisions of this article apply to any affected source that has an affected unit under the provisions of 9VAC5-80-380.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Any new unit exempted under 9VAC5-80-390.

2. Any affected unit exempted under 9VAC5-80-400.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Any emissions unit that is determined to be shutdown under the provisions of 9VAC5-20-220.

D. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this article by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

E. Particulate matter emissions shall be used to determine the applicability of this article to major sources only if particulate matter (PM<sub>10</sub>) emissions cannot be quantified in a manner acceptable to the ~~board~~ department.

**9VAC5-80-370. Definitions.**

As used in this article and related permits and orders issued by the ~~board~~ department, all words and terms not defined herein shall have the meaning given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless the context clearly indicates otherwise; otherwise, words and terms shall have the following meanings:

"Acid rain compliance option" means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with 9VAC5-80-450 or 40 CFR Part 76.

"Acid rain compliance plan" means the document submitted for an affected source in accordance with 9VAC5-80-430 specifying the method or methods (including one or more acid rain compliance options under 9VAC5-80-450 or 40 CFR Part 76) by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.

"Acid rain emissions limitation" means:

1. For the purposes of sulfur dioxide emissions:

a. The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under §§ 404(a)(1), (a)(3), and (h) of the federal Clean Air Act, or the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under § 410 of the federal Clean Air Act for use in a calendar year;

b. As adjusted:

(1) By allowances allocated by the administrator pursuant to §§ 403, 405(a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and 406 of the federal Clean Air Act;

(2) By allowances allocated by the administrator pursuant to Subpart D of 40 CFR Part 72; and thereafter

(3) By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34(c); and

2. For purposes of nitrogen oxides emissions, the applicable limitation established by 40 CFR Part 76, as modified by an acid rain permit application submitted to the ~~board~~ department, and an acid rain permit issued by the ~~board~~ department, in accordance with 40 CFR Part 76.

"Acid rain emissions reduction requirement" means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Acid rain permit" or "permit" means the legally binding written document, or portion of such document, issued by the ~~board~~ department (following an opportunity for appeal pursuant to 40 CFR Part 78 or the Administrative Process Act), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.

"Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the federal Clean Air Act, 40 CFR Parts 73, 74, 75, 76, 77, and 78, and this article.

"Acid rain program regulations" means regulations implementing Title IV of the federal Clean Air Act, including 40 CFR Parts 73, 74, 75, 76, 77, and 78, and this article.

"Actual sulfur dioxide emissions rate" means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the NADB, the "1985 actual sulfur dioxide emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO2RTE."

"Administrative record" means the written documentation that supports the issuance or denial of the acid rain permit and that contains the following:

1. The permit application and any supporting or supplemental data submitted by the designated representative.
2. The draft permit.
3. The statement of basis.
4. Copies of any documents cited in the statement of basis and any other documents relied on by the ~~board~~ department in issuing or denying the draft permit (including any records of discussions or conferences with owners, operators, or the designated representative of affected units at the source or interested persons regarding the draft permit), or, for any such documents that are readily available, a list of those documents and a statement of their location.
5. Copies of all written public comments submitted on the draft permit or denial of a draft permit.
6. The record of any public hearing on the draft permit or denial of a draft permit.
7. The acid rain permit.
8. Any response to public comments submitted on the draft permit or denial of a draft permit and copies of any documents cited in the response and any other documents relied on by the ~~board~~ department to issue or deny the acid rain permit, or, for any such documents that are readily available, a list of those documents and a statement of their location.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation. Affected units are specifically designated in 9VAC5-80-380.

"Allocate" or "allocation" means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.

"Allowable emissions" means the emission rates of an affected source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

state or federally enforceable limits which restrict the operating rate or hours of operation of both and the most stringent of the following:

1. Applicable emission standards.
2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.
3. Any other applicable emission limitation, including those with a future compliance date.

"Allowance" means an authorization by the administrator under the acid rain program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

"Allowance deduction" or "deduct" (when referring to allowances) means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount, or future year subaccount, to account for the number of the tons of sulfur dioxide emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR Part 75, or for any other allowance surrender obligations of the acid rain program.

"Allowances held" or "hold allowances" means the allowances recorded by the administrator, or submitted to the administrator for recordation in accordance with 40 CFR 73.50, in an allowance tracking system account.

"Allowance tracking system" means the acid rain program system by which the administrator allocates, records, deducts, and tracks allowances.

"Allowance tracking system account" means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring, and using allowances.

"Allowance transfer deadline" means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future effective compliance dates):

1. Any standard or other requirement provided for in the implementation plan, including any source-specific provisions such as consent agreements or orders.
2. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to the state operating permit program, except for terms or conditions derived from applicable state requirements.
3. Any standard or other requirement prescribed under the Regulations for the Control and Abatement of Air Pollution, particularly the provisions of 9VAC5 Chapter 40 (9VAC5-40-10 et seq.), 9VAC5 Chapter 50 (9VAC5-50-10 et seq.), or 9VAC5 Chapter 60 (9VAC5-60-10 et seq.), adopted pursuant to requirements of the federal Clean Air Act or under § 111, 112 or 129 of the federal Clean Air Act.
4. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
5. Any standard or other requirement of the acid rain program under Title IV of the federal Clean Air Act or the acid rain program regulations.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

6. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or the Regulations for the Control and Abatement of Air Pollution.
7. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
8. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.
9. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.
10. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

"Applicable requirement" means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-700.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

1. Any standard or other requirement prescribed by any regulation of the board that is not included in the definition of applicable federal requirement.
2. Any regulatory provision or definition directly associated with or related to any of the state requirements listed in this definition.

"Authorized account representative" means a responsible natural person who is authorized, in accordance with 40 CFR Part 73, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

"Basic Phase II allowance allocations" means:

1. For calendar years 2000 through 2009 inclusive, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.
2. For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

"Certificate of representation" means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source or sources and of the affected units at such source or sources with regard to matters under the acid rain program.

"Certifying official" means:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;
2. For partnership or sole proprietorship, a general partner or the proprietor, respectively; and
3. For a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials publication, "Standard Classification of Coals by Rank" (see 9VAC5-20-21).

"Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquified or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

"Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where:

1. For purposes of 40 CFR Part 75 (continuous emissions monitoring), a unit is "coal-fired" independent of the percentage of coal or coal-derived fuel consumed in any calendar year (expressed in mmBtu); and
2. For all other purposes under the acid rain program, except for purposes of applying 40 CFR Part 76, a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMFUEL."

"Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

"Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

"Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

"Common stack" means the exhaust of emissions from two or more units through a single flue.

"Complete application" means an application that contains all the information required pursuant to 9VAC5-80-430 and 9VAC5-80-440 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the ~~board~~ department from requesting or accepting additional information.

"Compliance certification" means a submission to the administrator or ~~board~~ department, as appropriate, that is required by the acid rain program regulations to report an affected source or an affected unit's compliance or noncompliance with a provision of the acid rain program and that is signed and verified by the designated representative in accordance with Subparts B and I of 40 CFR Part 72, 9VAC5-80-470 and 9VAC5-80-490 P, and the acid rain program regulations.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Compliance plan" means the document submitted for an affected source in accordance with 9VAC5-80-430 specifying the method or methods by which each emissions unit at the source will meet applicable requirements.

"Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to 40 CFR 73.31(a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.

"Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.

"Construction" means fabrication, erection, or installation of a unit or any portion of a unit.

"Customer" means a purchaser of electricity not for the purpose of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source or by the owners and operators of a combustion source or process source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this article, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.

"Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined in the American Society for Testing and Materials publication, "Standard Specification for Diesel Fuel Oils" (see 9VAC5-20-21), grades 1-GT or 2-GT, as defined by ASTM D2990-90a, "Standard Specification for Gas Turbine Fuel Oils," or grades 1 or 2, as defined by ASTM D396-90, "Standard Specifications for Fuel Oils" (incorporated by reference in 40 CFR 72.13).

"Direct public utility ownership" means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

"Draft permit" or "draft acid rain permit" means the version of a permit, or the acid rain portion of a federal operating permit, for which the ~~board~~ department offers public participation under 9VAC5-80-670 or affected state review under 9VAC5-80-690.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator, in accordance with the emissions monitoring requirements of 40 CFR Part 75.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Emissions unit" means any part or activity of an affected source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in this article or 40 CFR Part 72.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means:

1. Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the acid rain emissions limitation for sulfur dioxide for the unit; and
2. Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the acid rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

"Existing unit" means a unit (including a unit subject to § 111 of the federal Clean Air Act) that commenced commercial operation before November 15, 1990, and that on or after November 15, 1990, served a generator with a nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990, served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an "existing unit."

"Facility" means any institutional, commercial, or industrial structure, installation, plant, source, or building.

"Federal operating permit" means a permit issued under this article, Article 1 (9VAC5-80-50 et seq.) of this part, 40 CFR Part 72, or any other regulation implementing Title V of the federal Clean Air Act.

"Federal Power Act" means 16 USC § 791a et seq.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit unless expressly designated as not federally enforceable.
4. Limitations and conditions that are part of an approved implementation plan.
5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.
6. Limitations and conditions that are part of a state operating permit issued under regulations approved by the EPA into the implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that the EPA has legal authority to create.

"Final permit" means the version of a permit issued by the ~~board~~ department under this article that has completed all review procedures required by 9VAC5-80-670 and 9VAC5-80-690.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year (expressed in mmBtu).

"Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined in the American Society for Testing and Materials publication, "Standard Specification for Fuel Oils" (see 9VAC5-20-21), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state; provided that for purposes of monitoring requirements, "fuel oil" shall be limited to the petroleum-based fuels for which applicable ASTM methods are specified in Appendices D, E, or F of 40 CFR Part 75.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Gas-fired" means:

1. The combustion of:

a. Natural gas or other gaseous fuel (including coal-derived gaseous fuel), for at least 90% of the unit's average annual heat input during the previous three calendar years and for at least 85% of the annual heat input in each of those calendar years; and

b. Any fuel other than coal or coal-derived fuel (other than coal-derived gaseous fuel) for the remaining heat input, if any; provided that for purposes of 40 CFR Part 75, any fuel used other than natural gas shall be limited to:

(1) Gaseous fuels containing no more sulfur than natural gas; or

(2) Fuel oil.

2. For purposes of 40 CFR Part 75, a unit may initially qualify as gas-fired under the following circumstances:

a. If the designated representative provides fuel usage data for the unit for the three calendar years immediately prior to submission of the monitoring plan, and if the unit's fuel usage is projected to change on or before January 1, 1995, the designated representative submits a demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using the years 1995 through 1997 as the three-calendar-year period; or

b. If a unit does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan, the designated representative submits:

(1) The unit's designated fuel usage;

(2) Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;

(3) The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

(4) Demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using those three consecutive calendar years as the three-calendar-year period.

"General account" means an allowance tracking system account that is not a unit account.

"Generator" means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

"Generator output capacity" means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Heat input" means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Independent power production facility" means a source that:

1. Is nonrecourse project-financed, as defined by the Secretary of Energy at 10 CFR Part 715;
2. Is used for the generation of electricity, 80% or more of which is sold at wholesale; and
3. Is a new unit required to hold allowances under Title IV of the federal Clean Air Act; but only if direct public utility ownership of the equipment comprising the facility does not exceed 50%.

"Insignificant activity" means any emissions unit listed in 9VAC5-80-720 A, any emissions unit that meets the emissions criteria described in 9VAC5-80-720 B, or any emissions unit that meets the size or production rate criteria in 9VAC5-80-720 C. An emissions unit is not an insignificant activity if it has any applicable requirements unless those requirements apply identically to all emissions units at the facility.

"Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;
2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
3. For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, poor maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

"National allowance data base" or "NADB" means the data base established by the administrator under § 402(4)(C) of the federal Clean Air Act.

"Natural gas" means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) containing one grain or less hydrogen sulfide per 100 standard cubic feet, and 20 grains or less total sulfur per 100 standard cubic feet, produced in geological formations beneath the earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure under ordinary conditions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with 9VAC5-80-10, or Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1700 et seq.) or Article 9 (9VAC5-80-2000 et seq.) of this part promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"New unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

"Nonrecourse project-financed" means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by § 201(e) of the Federal Power Act, as amended, 16 USC § 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility's owners or other project participants shall not disqualify a facility from being "nonrecourse project-financed" as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from revenues generated by the facility, rather than from other sources of funds. Projects that are 100% equity financed are also considered "nonrecourse project-financed" for purposes of § 416(a)(2)(B) of the federal Clean Air Act.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Offset plan" means a plan pursuant to 40 CFR Part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

"Oil-fired" means:

1. The combustion of fuel oil for more than 10% of the average annual heat input during the previous three calendar years or for more than 15% of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel (including coal-derived gaseous fuel), other than coal or any other coal-derived fuel, for the remaining heat input, if any; provided that for purposes of 40 CFR Part 75, any fuel used other than fuel oil shall be limited to gaseous fuels containing no more sulfur than natural gas.
2. For purposes of 40 CFR Part 75, a unit that does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan may initially qualify as oil-fired if the designated representative submits:
  - a. The unit design fuel usage;
  - b. The unit's designed fuel usage;
  - c. Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;
  - d. The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and
  - e. A demonstration satisfactory to the administrator that the unit will qualify as oil-fired under the first sentence of this definition using those three consecutive calendar years as the three-calendar-year period.

"Owner," with respect to affected units, combustion sources, or process sources, means any of the following persons:

1. Any holder of any portion of the legal or equitable title in an affected unit, a combustion source, or a process source;
2. Any holder of a leasehold interest in an affected unit, a combustion source, or a process source;
3. Any purchaser of power from an affected unit, a combustion source, or a process source under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or
4. With respect to any allowance tracking system general account, any person identified in the submission required by 40 CFR 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

"Owner or operator" means any person who is an owner or who operates, controls, or supervises an affected unit, affected source, combustion source, or process source, and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit, affected source, combustion source, or process source.

"Permit" (unless the context suggests otherwise) means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Permit modification" means a revision to a permit issued under this article that meets the requirements of 9VAC5-80-570 on minor permit modifications, 9VAC5-80-580 on group processing of minor permit modifications, or 9VAC5-80-590 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9VAC5-80-570, 9VAC5-80-580, or 9VAC5-80-590 or any administrative permit amendment that meets the requirements of 9VAC5-80-560.

"Permit revision for affected units" means a permit modification, fast track modification, administrative permit amendment for affected units, or automatic permit amendment, as provided in 9VAC5-80-600 through 9VAC5-80-630.

"Phase II" means the acid rain program period beginning January 1, 2000, and continuing into the future thereafter.

"Potential electrical output capacity" means the MWe capacity rating for the units which shall be equal to 33% of the maximum design heat input capacity of the steam generating unit, as calculated according to Appendix D of 40 CFR Part 72.

"Potential to emit" means the maximum capacity of an affected source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Power distribution system" means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

"Power purchase commitment" means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

1. A power sales agreement;
2. A state regulatory authority order requiring a utility to (i) enter into a power sales agreement with the facility; (ii) purchase from the facility; or (iii) enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;
3. A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source executed within the time frame established by the terms of the letter of intent but no later than November 15, 1993, or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source executed on or before November 15, 1993; or
4. A utility competitive bid solicitation that has resulted in the selection of the qualifying facility or independent power production facility as the winning bidder.

"Power sales agreement" means a legally binding agreement between a qualifying facility, independent power production facility or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

"Primary fuel" or "primary fuel supply" means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

"Proposed permit" means the version of a permit that the ~~board~~ department proposes to issue and forwards to the administrator for review in compliance with 9VAC5-80-690.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Qualifying facility" means a "qualifying small power production facility" within the meaning of § 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of § 3(18)(B) of the Federal Power Act.

"Qualifying power purchase commitment" means a power purchase commitment in effect as of November 15, 1990, without regard to changes to that commitment so long as:

1. The identity of the electric output purchaser, or the identity of the steam purchaser and the location of the facility remain unchanged as of the date the facility commences commercial operation; and
2. The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the acid rain program to be shifted to the purchaser.

"Qualifying repowering technology" means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; or
2. Any oil- or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

"Receive" or "receipt of" means the date the administrator or the ~~board~~ department comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the administrator or the ~~board~~ department in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to allowances, the transfer of allowances by the administrator from one allowance tracking system account or subaccount to another.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.
2. Any pollutant for which an ambient air quality standard has been promulgated.
3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.
5. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.
6. Any pollutant subject to an applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. For a business entity, such as a corporation, association or cooperative:
  - a. The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the business entity; or
  - b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
    - (1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
    - (2) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the ~~board~~ department;
2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or
4. For affected sources:
  - a. The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and
  - b. The designated representative or any other person specified in this definition for any other purposes under this article or 40 CFR Part 70.

"Schedule of compliance" means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct noncompliance, with an applicable requirement of the acid rain program, including any applicable acid rain permit requirement.

"Secretary of Energy" means the Secretary of the United States Department of Energy or the secretary's duly authorized representative.

"Simple combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

"Solid waste incinerator" means a source as defined in § 129(g)(1) of the federal Clean Air Act.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the federal Clean Air Act. For purposes of § 502(c) of the federal Clean Air Act, a source, including a source with multiple units, shall be considered a single facility.

"Stack" means a structure that includes one or more flues and the housing for the flues.

"State enforceable" means all limitations and conditions which are enforceable by the ~~board~~ department, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9VAC5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;
2. By United States Postal Service; or
3. By other equivalent means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or § 112(g) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in 40 CFR 61.07; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

"Ton" or "tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR Part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

"Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990.

"Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

"Unit" means a fossil fuel-fired combustion device.

"Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

"Utility" means any person that sells electricity.

"Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility, or new independent power production facility may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

"Utility regulatory authority" means an authority, board, commission, or other entity (limited to the local, state, or federal level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

"Utility unit" means a unit owned or operated by a utility:

1. That serves a generator in any state that produces electricity for sale; or
2. That during 1985, served a generator in any state that produced electricity for sale.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

Notwithstanding subdivisions 1 and 2 of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990, is not a utility unit for purposes of the acid rain program.

Notwithstanding subdivisions 1 and 2 of this definition, a unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

**9VAC5-80-390. New units exemption.**

A. This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05% or less by weight, as determined in accordance with subdivision D 1 of this section.

B. The designated representative, authorized in accordance with Subpart B of 40 CFR Part 72, of a source that includes a unit under subsection A of this section may petition the ~~board~~ department for a written exemption, or to renew a written exemption, for the unit from the requirements of the acid rain program as described in subdivision C 1 of this section. The petition shall be submitted on a form approved by the ~~board~~ department which includes the following elements:

1. Identification of the unit.
2. The nameplate capacity of each generator served by the unit.
3. A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with subsection A of this section.
4. A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.
5. The special provisions in subsection D of this section.

C. The ~~board~~ department shall issue, for any unit meeting the requirements of subsections A and B of this section, a written exemption from the requirements of the acid rain program except for the requirements specified in this section, 40 CFR 72.2 through 72.7, and 40 CFR 72.10 through 72.13 (general provisions); provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking system account, allowances pursuant to 40 CFR 72.7(c)(1)(i) and (d)(1) (new units exemption).

1. The exemption shall take effect on January 1 of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subdivision 2 of this subsection, provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the acid rain program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.
2. In considering and issuing or denying a written exemption under this subsection, the ~~board~~ department shall apply the permitting procedures in 9VAC5-80-510 C by:
  - a. Treating the petition as an acid rain permit application under such provisions;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- b. Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and
    - c. Issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under such provisions, provided that no provision under 9VAC5-80-510 C concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.
  3. A written exemption issued under this section shall have a term of five years from its effective date, except as provided in subdivision D 3 of this section.
- D. The following provisions apply to units exempted under this section:
  1. The owners and operators of each unit exempted under this section shall determine the sulfur content by weight of its fuel as follows:
    - a. For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using methods found in the following American Society for Testing and Materials (ASTM) publications: "Standard Practice for Manual Sampling of Petroleum and Petroleum Products" and "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Spectrometry" or "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy" (see 9VAC5-20-21).
    - b. For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05% or less by weight.
    - c. For gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using methods found in the following ASTM publications: "Standard Test Method for Total Sulfur in Fuel Gases" and "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)" (see 9VAC5-20-21); provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using the method found in ASTM publication, "Standard Test Method for Total Sulfur in Fuel Gases" (see 9VAC5-20-21).
  2. The owners and operators of each unit exempted under this section shall retain at the source that includes the unit, the records of the results of the tests performed under subdivisions 1 a and 1 c of this subsection and a copy of the purchase agreements for the fuel under subdivision 1 of this subsection, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.
  3. On the earlier of the date the written exemption expires, the date a unit exempted under this section burns any fuel with a sulfur content in excess of 0.05% by weight (as determined in accordance with subdivision 1 of this subsection), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under this section and shall be subject to all requirements of the acid rain program, except that:
    - a. Notwithstanding 9VAC5-80-430 C, the designated representative of the source that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998, or the date the unit is no longer exempted under this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- b. For purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of subsection A of this section.

**9VAC5-80-400. Retired units exemption.**

A. This section applies to any affected unit (except for an opt-in source) that is permanently retired.

B. The following provisions apply:

1. Any affected unit (except for an opt-in source) that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, 40 CFR 72.2 through 72.6, 72.10 through 72.13, and Subpart B of 40 CFR Part 73.
2. The exemption under subdivision 1 of this subsection shall become effective on January 1 of the first full calendar year during which the unit is permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative (authorized in accordance with this subsection), or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit a statement to the board department otherwise responsible for administering a Phase II acid rain permit for the unit. A copy of the statement shall also be submitted to the administrator. The statement shall state (in a format prescribed by the administrator) that the unit is permanently retired and will comply with the requirements of paragraph (d) of 40 CFR 72.8.
3. After receipt of the notice under subdivision 2 of this subsection, the board department shall amend the federal operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under subdivision 1 of this subsection and subsection D of this section.

C. A unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, 40 CFR 72.2 through 72.6, 72.10 through 72.13, and Subpart B of 40 CFR Part 73, and shall be subject to the requirements of subsection D of this section in lieu of the requirements set forth in the written exemption. The board department shall amend the federal operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this subsection and under subsection D of this section.

D. The following special provisions apply:

1. A unit exempt under this section shall not emit any sulfur dioxide and nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with Subpart B of 40 CFR Part 73. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with Subparts C and D of 40 CFR Part 72 and an annual certification report in accordance with 40 CFR 72.90 through 72.92 and is subject to 40 CFR 72.95 and 72.96.
2. A unit exempt under this section shall not resume operation unless the designated representative of the source that includes the unit submits a complete acid rain permit application under 40 CFR 72.31 for the unit not less than 24 months prior to the later of January 1, 2000, or the date on which the unit is first to resume operation.
3. The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the acid rain

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

4. For any period for which a unit is exempt under this section, the unit is not an affected unit under the acid rain program and 40 CFR Parts 70 and 71 and is not eligible to be an opt-in source under 40 CFR Part 74. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under 40 CFR Parts 70 and 71.

5. For a period of five years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.

6. The following provisions apply to the loss of exemption:

a. On the earlier of the following dates, a unit exempt under subsection B or C of this section shall lose its exemption and become an affected unit under the acid rain program and 40 CFR Parts 70 and 71:

(1) The date on which the designated representative submits an acid rain permit application under subdivision D 2 of this section; or

(2) The date on which the designated representative is required under subdivision D 2 of this section to submit an acid rain permit application.

b. For the purpose of applying monitoring requirements under 40 CFR Part 75, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.

**9VAC5-80-410. General.**

A. No permit may be issued pursuant to this article until the article has been approved by the administrator, whether full, interim, partial, for federal delegation purposes, or otherwise.

B. If requested in the application for a permit or permit renewal submitted pursuant to this article, the ~~board~~ department may combine the requirements of and the permit for a source subject to the state operating permit program with the requirements of and the permit for a source subject to this article provided the application contains the necessary information required for a permit under the state operating permit program.

C. For the purpose of this article, the phrase " the Regulations for the Control and Abatement of Air Pollution" means 9VAC5 Chapter 10 (9VAC5-10-10 et seq.) through 9VAC5 Chapter 80 (9VAC5-80-10 et seq.). For purposes of implementing and enforcing those provisions of this article associated with applicable federal requirements as well as those provisions of this article intended to implement Title V of the federal Clean Air Act, the phrase " the Regulations for the Control and Abatement of Air Pollution" means only those provisions that have been approved by EPA as part of the implementation plan or otherwise have been approved by or found to be acceptable by EPA for the purpose of implementing requirements of the federal Clean Air Act. For the purpose of this article, terms and conditions relating to applicable federal requirements shall be derived only from provisions that qualify as applicable federal requirements.

**9VAC5-80-420. Standard requirements.**

A. The following requirements apply to affected sources and affected units subject to this article:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. The designated representative of each affected source and each affected unit at the source shall:
    - a. Submit a complete acid rain permit application (including a compliance plan) under this article in accordance with the deadlines specified in 9VAC5-80-430 C; and
    - b. Submit in a timely manner a complete reduced utilization plan if required under 40 CFR 72.43; and
    - c. Submit in a timely manner any supplemental information that the ~~board~~ department determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.
  2. The owners and operators of each affected source and each affected unit at the source shall:
    - a. Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the ~~board~~ department; and
    - b. Have an acid rain permit.
- B. The following monitoring requirements apply to affected sources and affected units subject to this article:
1. The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR Part 75 and § 407 of the federal Clean Air Act.
  2. The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and § 407 of the federal Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.
  3. The requirements of 40 CFR Parts 75 and 76 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the federal Clean Air Act and other provisions of the federal operating permit for the source.
- C. The following requirements regarding sulfur dioxide limitations and allowances apply to affected sources and affected units subject to this article:
1. The owners and operators of each source and each affected unit at the source shall:
    - a. Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount after deductions under 40 CFR 73.34(c) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and
    - b. Comply with the applicable acid rain emissions limitation for sulfur dioxide.
  2. Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the federal Clean Air Act.
  3. An affected unit shall be subject to the requirements under subdivision 1 of this subsection as follows:
    - a. Starting January 1, 1995, an affected unit under 9VAC5-80-380 A 2; or
    - b. Starting on or after January 1, 1995, in accordance with 40 CFR 72.41 and 72.43, an affected unit under 40 CFR 72.6(a)(2) or (3) that is a substitution or compensating unit; or
    - c. Starting January 1, 2000, an affected unit under 40 CFR 72.6(a)(2) that is not a substitution or compensating unit; or

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

d. Starting on the later of January 1, 2000, or the deadline for monitor certification under 40 CFR Part 75, an affected unit under 9VAC5-80-380 A 3 that is not a substitution or compensating unit.

4. Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

5. An allowance shall not be deducted, in order to comply with the requirements under subdivision 1 a of this subsection, prior to the calendar year for which the allowance was allocated.

6. An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under 9VAC5-80-390 and 9VAC5-80-400 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

7. An allowance allocated by the administrator under the acid rain program does not constitute a property right.

D. The owners and operators of the source and each affected unit at the source shall comply with the acid rain applicable emissions limitation for nitrogen oxides.

E. The following excess emissions requirements apply to affected sources and affected units subject to this article:

1. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and to the ~~board~~ department.

2. The owners and operators of an affected unit that has excess emissions in any calendar year shall:

a. Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and

b. Comply with the terms of an approved offset plan as required by 40 CFR Part 77.

F. The following recordkeeping and reporting requirements apply to affected sources and affected units subject to this article:

1. Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or ~~board~~ department.

a. The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation in accordance with 40 CFR 72.24, provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

b. All emissions monitoring information in accordance with 40 CFR Part 75, provided that to the extent that 40 CFR Part 75 provides for a three-year period for recordkeeping, the three-year period shall apply.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.
  - d. Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.
2. The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under 9VAC5-80-470 and 9VAC5-80-490 P and 40 CFR Part 75.
- G. The following requirements concerning liability apply to affected sources and affected units subject to this article:
1. Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under 9VAC5-80-390 or 9VAC5-80-400, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and by the ~~board~~ department pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.
  2. Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and 18 USC § 1001 and by the ~~board~~ department pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.
  3. No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.
  4. Each affected source and each affected unit shall meet the requirements of the acid rain program.
  5. Any provision of the acid rain program that applies to an affected source including a provision applicable to the designated representative of an affected source shall also apply to the owners and operators of such source and of the affected units at the source.
  6. Any provision of the acid rain program that applies to an affected unit including a provision applicable to the designated representative of an affected unit shall also apply to the owners and operators of such unit. Except as provided under 9VAC5-80-460 Phase II repowering extension plans, 40 CFR 72.41 (substitution plans), 72.43 (reduced utilization plans), 72.44 (Phase II repowering extensions), 74.47 (thermal energy plans), and 40 CFR Part 76 (NO<sub>x</sub> averaging plans), and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 including 40 CFR 75.16, 75.17, and 75.18, the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.
  7. Each violation of a provision of the acid rain program regulations by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the federal Clean Air Act.
- H. No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under 9VAC5-80-390 or 9VAC5-80-400 shall be construed as:
1. Except as expressly provided in Title IV of the federal Clean Air Act, exempting or excluding the owners and operators and, to the extent applicable, the designated

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

representative of an affected source or affected unit from compliance with any other provision of the federal Clean Air Act, including the provisions of Title I of the federal Clean Air Act relating to applicable National Ambient Air Quality Standards or the implementation plan;

2. Limiting the number of allowances a unit can hold, provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the federal Clean Air Act;
3. Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state regulation, or limiting such state regulation, including any prudence review requirements under such state law;
4. Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or
5. Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

**9VAC5-80-430. Applications.**

A. A single application is required identifying each emission unit subject to this article. The application shall be submitted according to the requirements of this section, 9VAC5-80-440 and procedures approved by the ~~board~~ department. Where several emissions units are included in one affected source, a single application covering all units in the source shall be submitted. A separate application is required for each affected source subject to this article.

B. For each source subject to this article, the responsible official shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. The following requirements concerning timely applications apply to affected sources and affected units subject to this article:

1. No owner or operator of any affected source shall operate the source or affected unit without a permit that states its acid rain program requirements.
2. The designated representative of any affected source shall submit a complete acid rain permit application by the following applicable deadlines:
  - a. For any affected source with an existing unit described under 9VAC5-80-380 A 2, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department as follows:
    - (1) For sulfur dioxide, on or before January 1, 1996; and
    - (2) For nitrogen oxides, on or before January 1, 1998.
  - b. For any affected source with a new unit described under 9VAC5-80-380 A 3 a, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.
  - c. For any affected source with a unit described under 9VAC5-80-380 A 3 b, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.
  - d. For any affected source with a unit described under 9VAC5-80-380 A 3 c, the designated representative shall submit a complete acid rain permit application



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

governing such unit to the ~~board~~ department at least 24 months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

e. For any affected source with a unit described under 9VAC5-80-380 A 3 d, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any affected source with a unit described under 9VAC5-80-380 A 3 e, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any affected source with a unit described under 9VAC5-80-380 A 3 f, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any affected source with a unit described under 9VAC5-80-380 A 3 g, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the incinerator consumed 20% or more fossil fuel (on a Btu basis).

3. The responsible official for an affected source applying for a permit under this article for the first time shall submit a complete application pertaining to all applicable requirements other than the acid rain program requirements on a schedule to be determined by the department but no later than 12 months following the effective date of approval of Article 1 (9VAC5-80-50 et seq.) of this part by the administrator, to include approval for federal delegation purposes.

4. The owner of a source subject to the requirements of the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of the new source review program.

5. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than 18 months prior to the date of permit expiration.

D. The following requirements concerning the completeness of the permit application apply to affected sources and affected units subject to this article:

1. To be determined complete, an application shall contain all information required pursuant to 9VAC5-80-440.

2. Applications for permit revision or for permit reopening shall supply information required under 9VAC5-80-440 only if the information is related to the proposed change.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Within 60 days of receipt of the application, the ~~board~~ department shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the ~~board~~ department shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the ~~board~~ department does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications under 9VAC5-80-570, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the ~~board~~ department finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under the new source review program.

8. Upon notification by the ~~board~~ department that the application is complete or after 60 days following receipt of the application by the ~~board~~ department, the applicant shall submit three additional copies of the complete application to the ~~board~~ department.

9. The ~~board~~ department shall submit a written notice of application completeness to the administrator within 10 working days following a determination by the ~~board~~ department that the acid rain permit application is complete.

E. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. The following requirements concerning the application shield apply to affected sources and affected units subject to this article:

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this article until the ~~board~~ department takes final action on the application under 9VAC5-80-510.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this article.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either 9VAC5-80-570 F or 9VAC5-80-580 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this article until the ~~board~~ department takes final action on the application under 9VAC5-80-510.

4. If the source notifies the ~~board~~ department that it wants to make an operational flexibility permit change under 9VAC5-80-680 B, the failure of the source to have a permit modification or operation of the source without a permit modification for the permit change shall not be a violation of this article unless the ~~board~~ department notifies the source that the change is not a permit change as specified in 9VAC5-80-680 B 1 a.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

5. If an applicant submits a timely and complete application under this section for a permit renewal but the ~~board~~ department fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9VAC5-80-500, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.
6. The protection under subdivisions 1 and 5 (ii) of this subsection shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the ~~board~~ department any additional information identified as being needed to process the application.
7. Permit application shield and binding effect of acid rain permit application for the affected source.
  - a. Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under 9VAC5-80-420 A 2 and subsection C of this section.
  - b. The protection provided under subdivision 7 a of this subsection shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the designated representative fails to submit by the deadline specified in writing by the ~~board~~ department any supplemental information identified as being needed to process the application.
  - c. Prior to the earlier of the date on which an acid rain permit is issued subject to administrative appeal under 40 CFR Part 78 or is issued as a final permit, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.
  - d. A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.
- G. The responsibilities of the designated representative shall be as follows:
  1. The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72 and, concurrently, shall submit a copy to the ~~board~~ department.
  2. Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.
  3. In each submission under the acid rain program, the designated representative shall certify, by his signature:
    - a. The following statement, which shall be included verbatim in such submission: "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made."

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- b. The following statement, which shall be included verbatim in such submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."
4. The ~~board~~ department shall accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subdivisions 2 and 3 of this subsection.
5. The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:
- By the date of submission of any acid rain program submissions by the designated representative;
  - Within 10 business days of receipt of a determination of any written determination by the administrator or the ~~board~~ department; and
  - Provided that the submission or determination covers the source or the unit.
6. The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subdivision 5 of this subsection, unless the owner or operator expressly waives the right to receive such a copy.

H. Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the ~~board~~ department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the ~~board~~ department, under the acid rain program. In the event of such communication, the ~~board~~ department is not required to stay any submission or the effect of any action or inaction under the acid rain program. The ~~board~~ department shall not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

I. The responsibilities of the responsible official shall be as follows:

- Any application form, report, compliance certification, or other document required to be submitted to the ~~board~~ department under this article that concerns applicable requirements other than the acid rain program requirements may be signed by a responsible official other than the designated representative.
- Any responsible official signing a document required to be submitted to the ~~board~~ department under this article shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-440. Application information required.**

A. The ~~board~~ department shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information as follows shall be included:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

3. Identification of each affected unit at the source for which the permit application is submitted.

4. If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

D. Emissions related information as follows shall be included:

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit with the following exceptions:

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level or size of the unit is deemed to be insignificant under 9VAC5-80-720 B or C shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in 9VAC5-80-720 A.

(2) Regardless of the emissions units designated in 9VAC5-80-720 A or C or the emissions levels listed in 9VAC5-80-720 B, the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination of the applicability of this article, the determination or imposition of any applicable requirement, or the calculation of permit fees.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent that the emissions are quantifiable.

2. Additional information related to the emissions of air pollutants sufficient for the ~~board~~ department to verify which requirements are applicable to the source, and other information necessary to determine and collect any permit fees owed under Article 2 (9VAC5-80-310 et seq.) of this part. Identification and description of all points of emissions described in subdivision 1 of this subsection in sufficient detail to establish the basis for fees and applicability of requirements of the Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.
7. Other information required by any applicable requirement (including information related to stack height limitations required under 9VAC5-40-20 I or 9VAC5-50-20 H).
8. Calculations on which the information in subdivisions 1 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

E. Air pollution control requirement information as follows shall be included:

1. Citation and description of all applicable requirements, including those covering activities deemed insignificant under Article 4 (9VAC5-80-710 et seq.) of this part.
2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information that may be necessary to implement and enforce other requirements of the Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act or to determine the applicability of such requirements.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the ~~board~~ department to define alternative operating scenarios identified by the source pursuant to 9VAC5-80-490 J or to define permit terms and conditions implementing operational flexibility under 9VAC5-80-680.

I. Compliance plan information as follows shall be included:

1. A description of the compliance status of the source with respect to all applicable requirements.
2. A description as follows:
  - a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
  - b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
  - c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
3. A complete acid rain compliance plan for each affected unit in accordance with 9VAC5-80-450.
4. A compliance schedule as follows:
  - a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
  - b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the ~~board~~ department if no specific requirement exists.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or ~~board~~ department order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

5. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

6. The requirements of this subsection shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the federal Clean Air Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.

J. Compliance certification information as follows shall be included:

1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the ~~board~~ department.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112(r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part.

M. The use of nationally standardized forms for acid rain portions of permit applications and compliance plans as required by 40 CFR 72.72(b)(4).

N. The applicant shall meet the requirements of 9VAC5-80-420 concerning permit applications, operation of the affected source, monitoring, sulfur dioxide, nitrogen dioxide, excess emissions, recordkeeping and reporting, liability, and effect on other authorities.

**9VAC5-80-450. Acid rain compliance plan and compliance options.**

A. For each affected unit included in an acid rain permit application, a complete acid rain compliance plan shall include:

1. For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

dioxide from the unit. The compliance plan may also specify, in accordance with this section and 9VAC5-80-460, one or more of the acid rain compliance options.

2. For nitrogen oxides emissions, a certification that the unit will comply with the applicable emission limitation in 40 CFR 76.5, 76.6, or 76.7 or shall specify one or more acid rain compliance options in accordance with the requirements of 40 CFR Part 76.

B. The acid rain compliance plan may include a multi-unit compliance option under 9VAC5-80-460 or § 407 of the federal Clean Air Act or 40 CFR Part 76.

1. A plan for a compliance option that includes units at more than one affected source shall be complete only if:

a. Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

b. A complete permit application is submitted covering each unit governed by such plan.

2. The ~~board's~~ department's approval of a plan under subdivision 1 of this subsection that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

C. In the compliance plan, the designated representative of an affected unit may propose, in accordance with this section and 9VAC5-80-460, any acid rain compliance option for conditional approval, provided that an acid rain compliance option under § 407 of the federal Clean Air Act may be conditionally proposed only to the extent provided in 40 CFR Part 76.

1. To activate a conditionally approved acid rain compliance option, the designated representative shall notify the ~~board~~ department in writing that the conditionally approved compliance option will actually be pursued beginning January 1 of a specified year. Such notification shall be subject to the limitations on activation under 9VAC5-80-460 and 40 CFR Part 76. If the conditionally approved compliance option includes a plan described in subdivision B 1 of this section, the designated representative of each source governed by the plan shall sign and certify the notification.

2. The notification under subdivision 1 of this subsection shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

3. Upon submission of a notification meeting the requirements of subdivisions 1 and 2 of this subsection, the conditionally approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.

4. A notification meeting the requirements of subdivisions 1 and 2 of this subsection will revise the unit's permit in accordance with 9VAC5-80-620.

D. The following requirements concerning terminations of compliance options apply to affected sources and affected units subject to this article:

1. The designated representative for a unit may terminate an acid rain compliance option by notifying the ~~board~~ department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under 9VAC5-80-460 and 40 CFR Part 76. If the compliance



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

option includes a plan described in subdivision B 1 of this section, the designated representative for each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations or terminations under Subpart D of 40 CFR Part 72 and regulations implementing § 407 of the federal Clean Air Act.

2. The notification under subdivision 1 of this subsection shall specify the calendar year for which the termination will take effect.

3. Upon submission of a notification meeting the requirements of subdivisions 1 and 2 of this subsection, the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

4. A notification meeting the requirements of subdivisions 1 and 2 of this subsection will revise the unit's permit in accordance with 9VAC5-80-620.

**9VAC5-80-460. Repowering extensions.**

A. This section shall apply to the designated representative of:

1. Any existing affected unit that is a coal-fired unit and has a 1985 actual sulfur dioxide emissions rate equal to or greater than 1.2 lbs/mmBtu; or
2. Any new unit that will be a replacement unit, as provided in subdivision B 2 of this section, for a unit meeting the requirements of subdivision 1 of this subsection; or
3. Any oil- or gas-fired unit or both that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Secretary of Energy.

A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's acid rain emissions limitations for sulfur dioxide.

B. The designated representative of any unit meeting the requirements of subdivision A 1 of this section may include in the unit's acid rain permit application a repowering extension plan that includes a demonstration that:

1. The unit will be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide; or
2. The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

C. In order to apply for a repowering extension, the designated representative of a unit under subsection A of this section shall:

1. Submit to the ~~board~~ department, by January 1, 1996, a complete repowering extension plan;
2. Submit to the administrator before June 1, 1997, a complete petition for approval of repowering technology in accordance with 40 CFR 72.44(d) and submit a copy to the ~~board~~ department; and
3. If the repowering extension plan is submitted for conditional approval, submit to the ~~board~~ department by December 31, 1997, a notification to activate the plan in accordance with 9VAC5-80-450 C.

D. A complete repowering extension plan shall include the following elements:

1. Identification of the existing unit governed by the plan.
2. The unit's sulfur dioxide emissions limitation in the implementation plan.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. The unit's 1995 actual sulfur dioxide emissions rate.
4. A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under 40 CFR 72.44(d) with dates for the following milestones:
  - a. Completion of design engineering;
  - b. For a plan under subdivision B 1 of this section, removal of the existing unit from operation to install the qualified repowering technology;
  - c. Commencement of construction;
  - d. Completion of construction;
  - e. Start-up testing;
  - f. For a plan under subdivision B 2 of this section, shutdown of the existing unit; and
  - g. Commencement of commercial operation of the repowering technology.
5. For a plan under subdivision B 2 of this section:
  - a. Identification of the new unit. A new unit shall not be included in more than one repowering extension plan.
  - b. Certification that the new unit will replace the existing unit.
  - c. Certification that the new unit has the same designated representative as the existing unit.
  - d. Certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.
6. The special provisions of subsection G of this section.

E. The ~~board~~ department shall not approve a repowering extension plan until the administrator makes a conditional determination that the technology is a qualified repowering technology, unless the ~~board~~ department approves such plan subject to the conditional determination of the administrator.

1. Permit issuance shall be as follows:
  - a. Upon a conditional determination by the administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the ~~board~~ department that such plan meets the requirements of this section, the ~~board~~ department shall issue the acid rain portion of the federal operating permit including:
    - (1) The approved repowering extension plan; and
    - (2) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section will be met.
  - b. Except as otherwise provided in subsection F of this section, the repowering extension shall be in effect starting January 1, 2000, and ending on the day before the date (specified in the acid rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology, provided that the repowering extension shall end no later than December 31, 2003.
  - c. The portion of the federal operating permit specifying the repowering extension and other requirements under subdivision 1 a of this subsection shall be subject to the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

administrator's final determination, under 40 CFR 72.44(d)(4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.

3. Allowances shall be allocated in accordance with 40 CFR 72.44(f)(3) and (g).

F. The following provisions apply with respect to failed repowering projects:

1. If, at any time before the end of the repowering extension under subdivision E 1 b of this section, the designated representative of a unit governed by an approved repowering extension plan submits the notification under 9VAC5-80-470 D that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing, the designated representative may submit to the ~~board~~ department a proposed permit modification demonstrating that such efforts were in good faith. If such demonstration is to the satisfaction of the administrator, the unit shall not be deemed in violation of the federal Clean Air Act because of such a termination and the ~~board~~ department shall revise the federal operating permit in accordance with subdivision 2 of this subsection.

2. Regardless of whether notification under subdivision 1 of this subsection is given, the repowering extension shall end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under 9VAC5-80-470 D. The administrator shall deduct allowances (including a pro rata deduction for any fraction of a year) from the allowance tracking system account of the existing unit to the extent necessary to ensure that, beginning the day after the extension ends, allowances are allocated in accordance with 40 CFR 73.21(c)(1).

3. The designated representative of a unit governed by an approved repowering extension plan may submit to the ~~board~~ department a proposed permit modification demonstrating that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits, the unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. If such demonstration is to the satisfaction of the administrator, the following shall occur:

a. The unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations;

b. The ~~board~~ department shall revise the acid rain portion of the federal operating permit in accordance with subdivisions 3 b and 3 c of this subsection;

c. The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and

d. The repowering extension shall continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 31, 2003. The ~~board~~ department shall allocate or deduct allowances as necessary to ensure that allowances are allocated in accordance with paragraph (f)(3) of 40 CFR 72.44.

G. 1. The following special provisions apply with regard to emissions limitations:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. For sulfur dioxide, allowances allocated during the repowering extension under paragraphs (f)(3) and (g)(2)(iii) of 40 CFR 72.40 to a unit governed by an approved repowering extension plan shall not be transferred to any allowance tracking system account other than the unit accounts of other units at the same source as that unit.
  - b. For nitrogen oxides, any existing unit governed by an approved repowering extension plan shall be subject to the acid rain emissions limitations for nitrogen oxides in accordance with 40 CFR Part 76 beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.
  - c. No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under § 111(j) of the federal Clean Air Act.
  - d. No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under § 111 of the federal Clean Air Act.
2. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of 40 CFR 72.94.
  3. The following provisions regarding liability apply:
    - a. The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in 40 CFR Part 77 and § 411 of the federal Clean Air Act.
    - b. The units governed by the plan under paragraph (b)(2) of 40 CFR 72.40 shall continue to have a common designated representative until the exiting unit is permanently retired under the plan.
  4. Except as provided in paragraph (g) of 40 CFR 72.40, a repowering extension plan shall not be terminated after December 31, 1999.

**9VAC5-80-470. Units with repowering extension plans.**

A. No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the administrator and the ~~board~~ department:

1. Satisfactory documentation of a preliminary design and engineering effort.
2. A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the administrator under 40 CFR 72.44(d)(3).
3. The letter agreement under subdivision 2 of this subsection shall be signed and dated by each party and specify:
  - a. The parties to the contract;
  - b. The date each party executed the contract;
  - c. The unit to which the contract applies;
  - d. A brief list identifying each provision of the contract;
  - e. Any dates to which the parties agree, including construction completion date;
  - f. The total dollar amount of the contract; and
  - g. A statement that a copy of the contract is on site at the source and will be submitted upon written request of the administrator or the ~~board~~ department.

B. The designated representative of a unit governed by an approved repowering plan shall notify the administrator and the ~~board~~ department in writing at least 60 days in advance of the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

C. Not later than 60 days after the units repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the administrator and the ~~board~~ department comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR Part 75.

D. If at any time before the end of the repowering extension and before completion of construction and start-up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the administrator and the ~~board~~ department by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.

**9VAC5-80-480. Emission caps.**

A. The ~~board~~ department may establish an emission cap for sources or emissions units applicable under this article when the applicant requests that a cap be established.

B. The criteria in this subsection shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in the Regulations for the Control and Abatement of Air Pollution prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this article.

2. A permit issued under this article may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in the Regulations for the Control and Abatement of Air Pollution prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination thereof for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination thereof.

C. Using the significant modification procedures of 9VAC5-80-590, an emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subdivisions B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to the new source review program.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-490. Permit content.**

A. The following requirements apply to permit content:

1. The ~~board~~ department shall include in the permit all applicable requirements for all emissions units.
2. The ~~board~~ department shall include in the permit applicable requirements that apply to fugitive emissions.
3. Each permit issued under this article shall include the elements listed in subsections B through P of this section.
4. Each acid rain permit (including any draft or proposed acid rain permit) shall contain the following elements:
  - a. All elements required for a complete acid rain permit application under 9VAC5-80-440, as approved or adjusted by the ~~board~~ department;
  - b. The applicable acid rain emissions limitation for sulfur dioxide; and
  - c. The applicable acid rain emissions limitation for nitrogen oxides.
5. Each acid rain permit is deemed to incorporate the definitions of terms under 9VAC5-80-370.

B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.
2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
3. If applicable requirements contained in the Regulations for the Control and Abatement of Air Pollution allow a determination of an alternative emission limit at a source, equivalent to that contained in the Regulations for the Control and Abatement of Air Pollution, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

C. Each permit shall contain terms and conditions setting out the following elements identifying equipment specifications and operating parameters:

1. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.
2. Specifications for air pollution control equipment installed or to be installed.
3. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved.

The information on any specification required in subdivisions 1 and 2 of this subsection may be included in the permit for informational purposes only and does not form an enforceable term or condition of the permit unless: (i) the specification is an applicable federal requirement, (ii) the specification is derived from and necessary to enforce an applicable federal requirement, (iii) the operation of the source contrary to the specification would violate an applicable federal

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

requirement, or (iv) the owner voluntarily takes the specification as a state-enforceable term or condition of the permit pursuant to 9VAC5-80-300.

D. Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specific monitoring or testing is adequate to assure compliance at least to the same extent as the applicable requirements relating to monitoring or testing that are not included in the permit as a result of such streamlining.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subdivision F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subdivision.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. The following requirements concerning recordkeeping and reporting apply:

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

- (1) The date, place as defined in the permit, and time of sampling or measurements.
- (2) The date or dates analyses were performed.
- (3) The company or entity that performed the analyses.
- (4) The analytical techniques or methods used.
- (5) The results of such analyses.
- (6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 9VAC5-80-430 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The ~~board~~ department shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in 9VAC5-80-490 L, 9VAC5-80-640 and 9VAC5-80-660. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the ~~board~~ department, within a reasonable time, any information that the ~~board~~ department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the ~~board~~ department copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the ~~board~~ department along with a claim of confidentiality.

H. Each permit shall contain a condition setting out the requirement to pay permit fees consistent with Article 2 (9VAC5-80-310 et seq.) of this part.

I. The following requirements concerning emissions trading apply:

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any federally approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that the Regulations for the Control and Abatement of Air Pollution



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

- a. All terms and conditions required under this section except subsection N shall be included to determine compliance.
- b. The permit shield described in 9VAC5-80-500 shall extend to all terms and conditions that allow such increases and decreases in emissions.
- c. The owner shall meet all applicable requirements including the requirements of this article.

J. Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the ~~board~~ department. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.
2. The permit shield described in 9VAC5-80-500 shall extend to all terms and conditions under each such operating scenario.
3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this article.

K. Consistent with subsections E and F of this section, each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the ~~board~~ department shall contain a certification by a responsible official that meets the requirements of 9VAC5-80-430 G.
2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the ~~board~~ department to perform the following:
  - a. Enter upon the premises where the source is located or emissions related activity is conducted, or where records must be kept under the terms and conditions of the permit.
  - b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.
  - c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.
  - d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with 9VAC5-80-440 I.

4. Progress reports consistent with an applicable schedule of compliance and 9VAC5-80-440 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the ~~board~~ department. Such progress reports shall contain the following:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.
    - b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
  5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:
    - a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the ~~board~~ department ) of submissions of compliance certifications.
    - b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.
    - c. A requirement that the compliance certification include the following (provided that the identification of applicable information may cross reference the permit or previous reports, as applicable):
      - (1) The identification of each term or condition of the permit that is the basis of the certification.
      - (2) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under subsection E of this section. If necessary, the owner or operator shall also identify any other material information that must be included in the certification to comply with § 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information.
      - (3) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in 9VAC5-80-110 K 5 c (2). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exception to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred.
      - (4) Such other facts as the ~~board~~ department may require to determine the compliance status of the source.
    - d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the ~~board~~ department.
  6. Such other provisions as the ~~board~~ department may require.
- L. Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:
1. The permit shall be reopened by the ~~board~~ department if additional applicable federal requirements become applicable to an affected source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

the original permit or any of its terms and conditions has been extended pursuant to 9VAC5-80-430 F.

2. The permit shall be reopened if the ~~board~~ department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the ~~board~~ department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

4. The permit shall be reopened if additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

5. The permit shall not be reopened by the ~~board~~ department if additional applicable state requirements become applicable to an affected source prior to the expiration date established under subsection D of this section.

M. The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with the Regulations for the Control and Abatement of Air Pollution, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. The following requirements concerning federal enforceability apply:

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subdivision 2 of this subsection.

2. The ~~board~~ department shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of 9VAC5-80-690 concerning review of proposed permits by EPA and draft permits by affected states.

3. The ~~board~~ department may specifically designate as state enforceable any applicable state requirement that has been submitted to the administrator for review to be approved as part of the implementation plan and that has not yet been approved. The permit shall specify that the provision will become federally enforceable upon approval of the provision by the administrator and through an administrative permit amendment.

O. Each permit shall include requirements with respect to allowances held by the source under Title IV of the federal Clean Air Act or 40 CFR Part 73. Such requirements shall include the following:

1. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the federal Clean Air Act or 40 CFR Part 73.

2. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program provided that such increases do not require a permit revision under any other applicable federal requirement.

3. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

4. Any such allowance shall be accounted for according to the procedures established in 40 CFR Part 73.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

P. The following requirements concerning annual compliance certification reports apply:

1. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and to the ~~board~~ department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.
2. The submission of complete compliance certifications in accordance with subsection A of this section and 40 CFR Part 75 shall be deemed to satisfy the requirement to submit compliance certifications under subdivision K 5 c of this section with regard to the acid rain portion of the source's federal operating permit.

**9VAC5-80-500. Permit shield.**

A. The ~~board~~ department shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.
2. Any other applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the federal Clean Air Act, as provided in the acid rain program regulations shall be deemed to be operating in compliance with the acid rain program, except as provided in 9VAC5-80-420 G 6.

D. Nothing in this section or in any permit issued under this article shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.
2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.
3. The ability to obtain information from a source by the (i) administrator pursuant to § 114 of the federal Clean Air Act (inspections, monitoring, and entry); or (ii) ~~board~~ department pursuant to § 10.1-1307.3, § 10.1-1314 or 10.1-1315 of the Virginia Air Pollution Control Law ~~or (iii) department pursuant to § 10.1-1307.3 of the Virginia Air Pollution Control Law.~~
4. The applicable federal requirements of the acid rain program consistent with § 408(a) of the federal Clean Air Act.

**9VAC5-80-510. Action on permit application.**

A. The ~~board~~ department shall take final action on each permit application (including a request for permit modification or renewal) as follows:

1. The ~~board~~ department shall issue or deny all permits in accordance with the requirements of this article and this section, including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 9VAC5-80-660 C.
2. For permit revisions, as required by the provisions of 9VAC5-80-500 through 9VAC5-80-630.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The ~~board~~ department has received a complete application for a permit, permit modification, or permit renewal.
2. Except for modifications qualifying for minor permit modification procedures under 9VAC5-80-570 or 9VAC5-80-580, the ~~board~~ department has complied with the requirements for public participation under 9VAC5-80-670.
3. The ~~board~~ department has complied with the requirements for notifying and responding to affected states under 9VAC5-80-690.
4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Article 2 (9VAC5-80-310 et seq.) of this part, and the requirements of this article.
5. The administrator has received a copy of the proposed permit and any notices required under 9VAC5-80-690 A and B and has not objected to issuance of the permit under 9VAC5-80-690 C within the time period specified therein.

C. The issuance of the acid rain portion of the federal operating permit shall be as follows:

1. After the close of the public comment period, the ~~board~~ department shall incorporate all necessary changes and issue or deny a proposed acid rain permit.
2. The ~~board~~ department shall submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with 9VAC5-80-690, the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.
3. Action by the administrator shall be as follows:
  - a. Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the ~~board~~ department or, under 9VAC5-80-690 C, the administrator shall incorporate any required changes and issue or deny the acid rain permit in accordance with 9VAC5-80-490 and 9VAC5-80-500.
  - b. No acid rain permit (including a draft or proposed permit) shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

4. Permit issuance deadlines and effective dates shall be as follows:

- a. The ~~board~~ department shall issue an acid rain permit to each affected source whose designated representative submitted in accordance with 9VAC5-80-430 G a timely and complete acid rain permit application by January 1, 1996, that meets the requirements of this article. The permit shall be issued by the effective date specified in subdivision 4 c of this subsection.
- b. Not later than January 1, 1999, the ~~board~~ department shall reopen the acid rain permit to add the acid rain program nitrogen oxides requirements, provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with 9VAC5-80-430 G. Such reopening shall not affect the term of the acid rain portion of a federal operating permit.
- c. Each acid rain permit issued in accordance with subdivision 4 a of this subsection shall take effect by the later of January 1, 1998, or, where the permit governs a unit under 9VAC5-80-380 A 3, the deadline for monitor certification under 40 CFR Part 75.
- d. Both the acid rain draft and final permit shall state that the permit applies on and after January 1, 2000. The draft and final permit shall also specify which applicable

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

requirements are effective prior to January 1, 2000, and the effective date of those applicable requirements.

e. Each acid rain permit shall have a term of five years commencing on its effective date.

f. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

5. Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the federal operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

6. Invalidation of the acid rain portion of a federal operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the acid rain portion of the permit.

D. The ~~board~~ department shall take final action on each permit application (including a request for a permit modification or renewal) no later than 18 months after a complete application is received by the ~~board~~ department, except in cases where a public hearing to provide the opportunity for interested persons to contest the application is granted pursuant to 9VAC5-80-35. The ~~board~~ department will review any request made under 9VAC5-80-670 E 2, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter. The initial permits issued under this article shall be issued by the effective date specified in subdivision C 4 c of this section.

E. Issuance of permits under this article shall not take precedence over or interfere with the issuance of preconstruction permits under the new source review program.

F. The ~~board~~ department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions) as follows. The ~~board~~ department shall send this statement to the administrator and to any other person who requests it.

1. The statement of basis shall briefly set forth significant factual, legal, and policy considerations on which the ~~board~~ department relied in issuing or denying the draft permit.

2. The statement of basis shall include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

3. The ~~board~~ department shall submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the federal operating permit that may affect the draft acid rain permit.

G. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the ~~board~~ department upon request.

H. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-520. Transfer of permits.**

A. No person shall transfer a permit from one location to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of an affected source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9VAC5-80-560.

C. In the case of a name change of an affected source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change and shall comply with the requirements of 9VAC5-80-560.

**9VAC5-80-530. Permit renewal and expiration.**

A. Permits being renewed shall be subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this article.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with 9VAC5-80-430.

C. If the ~~board~~ department fails to act in a timely way on a permit renewal, the administrator may invoke his authority under § 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

**9VAC5-80-550. Changes to permits.**

A. Changes to emissions units that pertain to applicable federal requirements at a source with a permit issued under this article shall be made as specified under subsections B and C of this section. Changes may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department or the administrator as specified in subsection C of this section. Changes to emissions units that pertain to applicable state requirements at a source with a permit issued under this article shall be made as specified under subsection E of this section.

B. The following requirements apply with respect to changes initiated by the permittee:

1. With regard to emissions units other than affected units, the permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in 9VAC5-80-560 through 9VAC5-80-590.
2. With regard to affected units, the permittee may initiate a change to a permit by requesting a permit modification, fast-track modification, administrative permit amendment or automatic permit amendment. The requirements for these permit revisions can be found in 9VAC5-80-600 through 9VAC5-80-630.
3. A request for a change by a permittee shall include a statement of the reason for the proposed change.
4. A permit revision may be submitted for approval at any time.
5. No permit revision shall affect the term of the acid rain permit to be revised.
6. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.
7. The terms of the acid rain permit shall apply while the permit revision is pending.
8. Any determination or interpretation by the state (including the ~~board~~ department or a state court) modifying or voiding any acid rain permit provision shall be subject to review

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

by the administrator in accordance with 9VAC5-80-690 C as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 9VAC5-80-620.

9. The standard requirements of 9VAC5-80-420 shall not be modified or voided by a permit revision.

10. Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 9VAC5-80-460, § 407 of the federal Clean Air Act and 40 CFR Part 76.

11. For permit revisions not described in 9VAC5-80-600 and 9VAC5-80-610, the ~~board~~ department may, in its discretion, determine which of these sections is applicable.

C. The administrator or the ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-640.

D. Changes to permits shall not be used to extend the term of the permit.

E. The following requirements apply with respect to changes at a source and applicable state requirements:

1. Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9VAC5-80-560 through 9VAC5-80-630.

2. The permittee may initiate a change pertaining only to applicable state requirements (i) if the change does not violate applicable requirements and (ii) if applicable, the requirements of the new source review program have been met.

3. Incorporation of permit terms and conditions into a permit issued under this article shall be as follows:

a. Permit terms and conditions pertaining only to applicable state requirements and issued under the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

b. Permit terms and conditions for changes to emissions units subject only to applicable state requirements and exempt from the requirements of the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

4. The source shall provide contemporaneous written notice to the ~~board~~ department of the change. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable state requirement that would apply as a result of the change.

5. The change shall not qualify for the permit shield under 9VAC5-80-500.

**9VAC5-80-560. Administrative permit amendments.**

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

4. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-520 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under the new source review program when the new source review program meets (i) procedural requirements substantially equivalent to the requirements of 9VAC5-80-670 and 9VAC5-80-690 that would be applicable to the change if it were subject to review as a permit modification, and (ii) compliance requirements substantially equivalent to those contained in 9VAC5-80-490.

6. Change in the enforceability status from state-only requirements to federally enforceable requirements for provision that have been approved through rulemaking by the administrator to be a part of the implementation plan.

B. Administrative permit amendments shall be made according to the following procedures:

1. The ~~board~~ department shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department shall incorporate the changes without providing notice to the public or affected states under 9VAC5-80-670 and 9VAC5-80-690. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The ~~board~~ department shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The ~~board~~ department shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield provisions of 9VAC5-80-500 for amendments made pursuant to subdivision A 5 of this section.

**9VAC5-80-570. Minor permit modifications.**

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not Title I modifications; and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

6. Are not required to be processed as a significant modification under 9VAC5-80-590 or as an administrative permit amendment under 9VAC5-80-560.

B. Notwithstanding subsection A of this section and 9VAC5-80-580 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Regulations for the Control and Abatement of Air Pollution or a federally approved program.

C. An application requesting the use of minor permit modification procedures shall meet the requirements of 9VAC5-80-440 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.
2. A suggested draft permit prepared by the applicant.
3. Certification by a responsible official, consistent with 9VAC5-80-430 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. Within five working days of receipt of a permit modification application that meets the requirements of subsection C of this section, the ~~board~~ department shall meet its obligation under 9VAC5-80-690 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The ~~board~~ department shall promptly send any notice required under 9VAC5-80-690 B 2 to the administrator. The public participation requirements of 9VAC5-80-670 shall not extend to minor permit modifications.

E. The timetable for issuance of permit modifications shall be as follows:

1. The ~~board~~ department may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the ~~board~~ department that he will not object to issuance of the permit modification, whichever occurs first, although the ~~board~~ department can approve the permit modification prior to that time.
2. Within 90 days of receipt by the ~~board~~ department of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under 9VAC5-80-600 C, whichever is later, the ~~board~~ department shall do one of the following:
  - a. Issue the permit modification as proposed.
  - b. Deny the permit modification application.
  - c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.
  - d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by 9VAC5-80-690 A.

F. The following requirements apply with respect to the ability of an owner to make minor permit modification changes:

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.
2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable federal requirements governing the change and the proposed permit terms and conditions.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. The permit shield under 9VAC5-80-500 shall not extend to minor permit modifications.

**9VAC5-80-580. Group processing of minor permit modifications.**

A. Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under 9VAC5-80-570 A.

2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in 9VAC5-80-370, or five tons per year, whichever is least.

B. An application requesting the use of group processing procedures shall meet the requirements of 9VAC5-80-440 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9VAC5-80-430 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision A 2 of this section.

5. Certification, consistent with 9VAC5-80-430 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the ~~board~~ department to use to notify the administrator and affected states as required under 9VAC5-80-690.

C. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subdivision A 2 of this section, whichever is earlier, the ~~board~~ department promptly shall meet its obligation under 9VAC5-80-690 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The ~~board~~ department shall send any notice required under 9VAC5-80-690 B 2 to the administrator. The public participation requirements of 9VAC5-80-670 shall not extend to group processing of minor permit modifications.

D. The provisions of 9VAC5-80-570 E shall apply to modifications eligible for group processing, except that the ~~board~~ department shall take one of the actions specified in 9VAC5-80-570 E 1 through E 4 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under 9VAC5-80-690 C, whichever is later.

E. The provisions of 9VAC5-80-570 F shall apply to modifications eligible for group processing.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

F. The permit shield under 9VAC5-80-500 shall not extend to minor permit modifications.

**9VAC5-80-590. Significant modification procedures.**

A. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under 9VAC5-80-570 or 9VAC5-80-580 or as administrative amendments under 9VAC5-80-560. Significant modification procedures shall be used for those permit modifications that:

1. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.
2. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources), or a visibility or increment analysis carried out under this chapter.
3. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:
  - a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification.
  - b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. An application for a significant permit modification shall meet the requirements of 9VAC5-80-430 and 9VAC5-80-440 for permit issuance and renewal for the modification proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.
2. A suggested draft permit prepared by the applicant.
3. Completed forms for the ~~board~~ department to use to notify the administrator and affected states as required under 9VAC5-80-690.

C. The provisions of 9VAC5-80-690 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9VAC5-80-670 shall apply to applications made under this section.

E. The ~~board~~ department shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. The owner shall not make the change applied for in the significant modification application until the modification is approved by the ~~board~~ department under subsection E of this section.

G. The provisions of 9VAC5-80-500 shall apply to changes made under this section.

**9VAC5-80-600. Permit modifications for affected units.**

A. The following are permit modifications for affected units:

1. Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period.
3. Determinations concerning failed repowering projects under 9VAC5-80-460 F 1 and F 3.
4. At the option of the designated representative submitting the permit revision, the permit revisions listed in 9VAC5-80-610 A.

B. An application for a permit modification for an affected unit shall meet the requirements of 9VAC5-80-430 and 9VAC5-80-440 for permit issuance and renewal for the modification proposed.

C. The provisions of 9VAC5-80-690 shall be carried out for permit modifications for affected units in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9VAC5-80-670 shall apply to applications made under this section.

E. The ~~board~~ department shall take final action on permit modifications for affected units within nine months after receipt of a complete application.

F. The owner shall not make the change applied for under this section until the modification is approved by the ~~board~~ department under subsection E of this section.

**9VAC5-80-610. Fast-track modifications for affected units.**

A. The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this section or permit modifications for affected units under 9VAC5-80-600:

1. Incorporation of a compliance option under 9VAC5-80-450 that the designated representative did not submit for approval and comment during the permit issuance process; except that incorporation of a reduced utilization plan that was not submitted during the permit issuance process, that does not designate a compensating unit, and that meets the requirements of 40 CFR 72.43 may use the administrative permit amendment procedures under 40 CFR 72.83.
2. Changes in a substitution plan or reduced utilization plan that result in the addition of a new substitution unit or a new compensating unit under the plan.
3. Addition of a nitrogen oxides averaging plan to a permit.
4. Changes in a Phase I extension plan, repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension; and
5. Changes in a thermal energy plan that result in any addition or subtraction of a replacement unit or any change affecting the number of allowances transferred for the replacement of thermal energy.

B. The following requirements apply with respect to service, notification, and public participation:

1. The designated representative shall serve a copy of the fast-track modification on the following at least five days prior to the public comment period specified in subdivisions 2 and 3 of this subsection:
  - a. The administrator;
  - b. The ~~board~~ department;
  - c. Affected states; and
  - d. Persons on a permit mailing list who have requested information on the opportunity for public comment.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Within five business days of serving copies of the fast-track modification under subdivision 1 of this subsection, the designated representative shall give public notice of the fast-track modification by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The notice shall contain the information listed in 9VAC5-80-670 C 1 a through C 1 h. The notice shall also state that a copy of the fast-track modification is available (i) from the designated representative and (ii) for public inspection during the entire public comment period at the regional office.

3. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the ~~board~~ department and to the designated representative.

C. The timetable for issuance shall be as follows:

1. Within 30 days of the close of the public comment period, the ~~board~~ department shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification.

2. A fast-track modification shall be effective immediately upon approval and issuance, in accordance with 9VAC5-80-510 B 5.

**9VAC5-80-620. Administrative permit amendments for affected units.**

A. The following permit revisions are administrative permit amendments for affected units:

1. Activation of a compliance option conditionally approved by the ~~board~~ department, provided that all requirements for activation under 9VAC5-80-450 C and 9VAC5-80-460 are met.

2. Changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72.

3. Correction of typographical errors.

4. Changes in names, addresses, or telephone or facsimile numbers.

5. Changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days to the administrator in accordance with Subpart B of 40 CFR Part 72.

6. Termination of a compliance option in the permit, provided that all requirements for termination under 9VAC5-80-450 D shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999.

7. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with 9VAC5-80-420.

8. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of the 40 CFR Part 76 are met.

9. The addition of a NO<sub>x</sub> early election plan that was approved by the administrator under 40 CFR 76.8.

10. The addition of an exemption for which the requirements have been met under 40 CFR 72.7 or 40 CFR 72.8 or which was approved by the ~~board~~ department; and

11. Incorporation of changes that the administrator has determined to be similar to those in subdivisions 1 through 8 of this subsection.

B. The following provisions shall apply:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. The ~~board~~ department shall take final action on an administrative permit amendment within 60 days, or, for the addition of an alternative emissions limitation demonstration period, within 90 days, of receipt of the requested amendment and may take such action without providing prior public notice. The source may implement any changes in the administrative permit amendment immediately upon submission of the requested amendment, provided that the requirements of subsection A of this section are met.
2. The ~~board~~ department may, on its own motion, make an administrative permit amendment at least 30 days after providing notice to the designated representative of the amendment and without providing any other prior public notice.
3. The ~~board~~ department shall designate the permit revision as having been made as an administrative permit amendment. The ~~board~~ department shall submit the revised portion of the permit to the administrator.
4. An administrative amendment shall not be subject to the provisions for review by the administrator applicable to a permit modification under 40 CFR 72.81.

**9VAC5-80-640. Reopening for cause.**

A. A permit shall be reopened and revised under any of the conditions stated in 9VAC5-80-490 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

D. In reopening an acid rain permit, the ~~board~~ department shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary.

E. The following requirements apply with respect to reopenings for cause by EPA:

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the ~~board~~ department and the permittee of such finding in writing.
2. The ~~board~~ department shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the ~~board~~ department must require the permittee to submit additional information.
3. The administrator shall review the proposed determination from the ~~board~~ department within 90 days of receipt.
4. The ~~board~~ department shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.
5. If the ~~board~~ department fails to submit a proposed determination pursuant to subdivision 2 of this subsection or fails to resolve any objection pursuant to subdivision 4 of this subsection, the administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subdivisions 1 through 4 of this subsection.
- b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

**9VAC5-80-650. Malfunction.**

A. In the event of a malfunction, the owner may demonstrate that the conditions of subsection B of this section are met.

B. The permittee may, through properly signed, contemporaneous operating logs, or other relevant evidence, show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.
2. The permitted facility was at the time being properly operated.
3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.
4. The permittee notified the ~~board~~ department of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification should include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing by any method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9VAC5-80-490 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9VAC5-20-180 C.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

**9VAC5-80-660. Enforcement.**

A. The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Code of Virginia, failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.
2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:
  - a. Knowingly makes material misstatements in the permit application or any amendments thereto.
  - b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this article.
3. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any permit for any of the grounds for revocation or termination contained in subdivision 2 of this subsection or for any other violations of these regulations.

B. The following requirements apply with respect to penalties:



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. An owner who violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.
  2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.
  3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.
- C. The following requirements apply with respect to appeals:
1. The ~~board~~ department shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.
  2. Appeal from any decision of the ~~board~~ department under subdivision 1 of this subsection may be taken pursuant to 9VAC5-20-90, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.
  3. Appeals of the acid rain portion of a federal operating permit issued by the ~~board~~ department that do not challenge or involve decisions or actions of the administrator under §§ 407 and 410 of the federal Clean Air Act and the acid rain program regulations shall be conducted according to the procedures in the Administrative Process Act. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and § 307 of the federal Clean Air Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.
  4. No administrative appeal or judicial appeal of the acid rain portion of a federal operating permit shall be allowed more than 90 days following issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.
  5. The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.
  6. No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:
    - a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;
    - b. Any standard requirement under 9VAC5-80-420;
    - c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR Part 75;
    - d. Uncontested provisions of the decision on appeal; and
    - e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.
  7. The ~~board~~ department shall serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any federal operating

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

permit or denial of an acid rain portion of any federal operating permit within 30 days of the filing of the appeal.

8. The ~~board~~ department shall serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator shall have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with 9VAC5-80-690.

D. The existence of a permit under this article shall constitute a defense to a violation of any applicable requirement if the permit contains a condition providing the permit shield as specified in 9VAC5-80-500 and if the requirements of 9VAC5-80-500 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this article shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or the Regulations for the Control and Abatement of Air Pollution and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. The following requirements apply with respect to inspections and right of entry:

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and 9VAC5-20-150, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this article.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

- a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and
- b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the ~~board~~ department or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the ~~board~~ department shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. The ~~board~~ department may enforce permits issued under this article through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9VAC5-20-20 and 9VAC5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

**9VAC5-80-670. Public participation.**

A. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The ~~board~~ department shall notify the public using the procedures in subsection B of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. The ~~board~~ department shall notify the public of the draft permit or draft permit modification (i) by advertisement in a newspaper of general circulation in the area where the source is located and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

C. The following requirements apply with respect to content of the public notice and availability of information:

1. The notice shall include, but not be limited to, the following:

- a. The source name, address and description of specific location.
- b. The name and address of the permittee.
- c. The name and address of the regional office processing the permit.
- d. The activity or activities for which the permit action is sought.
- e. The emissions change that would result from the permit issuance or modification.
- f. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, and all relevant supporting materials, including the compliance plan.
- g. A brief description of the comment procedures required by this section.
- h. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the ~~board~~ director determines to hold a hearing under ~~subdivision E 3 of this section~~ 9VAC5-80-35 E.

2. Information on the permit application (exclusive of confidential information under 9VAC5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. The ~~board~~ department shall provide such notice and opportunity for participation by affected states as is provided for by 9VAC5-80-690.

E. The following requirements apply with respect to opportunity for public hearing:

1. The ~~board~~ department shall provide an opportunity for a public hearing as described in subdivisions ~~2 through 6~~ and 3 of this subsection.

2. Following the initial publication of the notice required under subsection B of this section, the ~~board~~ department shall receive written requests for a public hearing to contest the draft permit or draft permit modification pursuant to the requirements of 9VAC5-80-35. In order to be considered, the request shall be submitted no later than the end of the comment period. ~~Request~~ Requests for a public hearing shall contain the following information:

- a. The name, ~~;~~ and postal mailing or email address and telephone number of the requester. ~~;~~
- b. The names and addresses of all persons for whom the requester is acting as a representative ~~(for the purposes of this requirement, an unincorporated association is a person).~~ ; for the purposes of this requirement, "person" means an unincorporated association.
- c. The reason ~~why a public hearing is requested.~~ for the request for a public hearing.
- d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the draft permit or draft permit modification, an explanation of how

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

e. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

3. The ~~board~~ department will review any request made under subdivision 2 of this subsection, and will take final action on the request as provided in 9VAC5-80-510 D.

F. The ~~board~~ department shall keep (i) a record of the commenters and (ii) a record of the issues raised during the public participation process so that the administrator may fulfill the administrator's obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted. Such records shall be made available to the public upon request.

**9VAC5-80-680. Operational flexibility.**

A. The ~~board~~ department shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term, or (ii) those that are not addressed or prohibited by the permit. The conditions under which the ~~board~~ department shall allow these changes to be made are specified in subsections B and C of this section, respectively.

B. The following requirements apply with respect to changes that contravene an express permit term:

1. The following general requirements apply:

a. The ~~board~~ department shall allow a change at an affected source that changes a permit condition with the exception of the following:

(1) A Title I modification or a change subject to requirements under Title IV.

(2) A change that would exceed the emissions allowable under the permit.

(3) A change that would violate applicable requirements.

(4) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), recordkeeping, reporting, compliance schedule dates or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The owner, ~~board~~ department and the administrator shall attach the notice described in subdivision 1 b of this subsection to their copy of the relevant permit.

d. The permit shield under 9VAC5-80-500 shall not extend to any change made pursuant to subdivision 1 of this subsection.

2. The following requirements apply with respect to emission trades within permitted facilities provided for in the Regulations for the Control and Abatement of Air Pollution:

a. With the exception of the changes listed in subdivision 1 a of this subsection, the ~~board~~ department shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where the Regulations for the Control and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

Abatement of Air Pollution provide for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in the Regulations for the Control and Abatement of Air Pollution authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the Regulations for the Control and Abatement of Air Pollution, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the Regulations for the Control and Abatement of Air Pollution and which provide for the emissions trade.

c. The permit shield described in 9VAC5-80-500 shall not extend to any change made under this subdivision. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the Regulations for the Control and Abatement of Air Pollution.

3. The following requirements apply with respect to emission trades within affected sources to comply with an emissions cap in the permit:

a. If a permit applicant requests it, the ~~board~~ department shall issue permits that contain terms and conditions, including all terms required under 9VAC5-80-490 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable federal requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The ~~board~~ department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The ~~board~~ department shall not allow a change to be made under subdivision 3 of this subsection if it is a change listed in subdivision 1 of this subsection.

c. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under 9VAC5-80-500 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. The following requirements apply with respect to changes that are not addressed or prohibited by the permit:

1. The ~~board~~ department shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are subject to the requirements for Title I modifications or the requirements under Title IV.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition which is based on applicable federal requirements.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Sources shall provide contemporaneous written notice to the ~~board~~ department and the administrator of each change, except for changes to emissions units deemed insignificant and listed in 9VAC5-80-720 A. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable federal requirement that would apply as a result of the change.
4. The change shall not qualify for the permit shield under 9VAC5-80-500.
5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable federal requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

**9VAC5-80-690. Permit review by EPA and affected states.**

A. The following requirements apply with respect to transmission of information to the administrator:

1. The ~~board~~ department shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this article.
2. The ~~board~~ department shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. The following requirements apply with respect to review by affected states:

1. The ~~board~~ department shall give notice of each draft permit to any affected state on or before the time that the ~~board~~ department provides this notice to the public under 9VAC5-80-670, except to the extent that 9VAC5-80-570 or 9VAC5-80-580 requires the timing of the notice to be different.
2. The ~~board~~ department, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under 9VAC5-80-570 or 9VAC5-80-580), shall notify the administrator and any affected state in writing of any refusal by the ~~board~~ department to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons why the ~~board~~ department will not accept a recommendation. The ~~board~~ department shall not be obligated to accept recommendations that are not based on applicable federal requirements or the requirements of this article.

C. The following requirements apply with respect to objections by EPA:

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.
2. Any objection by the administrator under subdivision 1 of this subsection shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.
3. Failure of the ~~board~~ department to do any of the following also shall constitute grounds for an objection:
  - a. Comply with subsection A or B of this section or both.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- b. Submit any information necessary to review adequately the proposed permit.
  - c. Process the permit under the public comment procedures in 9VAC5-80-670 except for minor permit modifications.
4. If, within 90 days after the date of an objection under subdivision 1 of this subsection, the ~~board~~ department fails to revise and submit a proposed permit in response to the objection, the administrator shall issue or deny the permit in accordance with the requirements of 40 CFR Part 71.
- D. The following requirements apply with respect to public petitions to the administrator:
1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.
  2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 9VAC5-80-670, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.
  3. If the administrator objects to the permit as a result of a petition filed under subdivision 1 of this subsection, the ~~board~~ department shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.
  4. If the ~~board~~ department has issued a permit prior to receipt of an objection by the administrator under subdivision 1 of this subsection, the administrator shall modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 9VAC5-80-640 E 4 or E 5 a and b except in unusual circumstances, and the ~~board~~ department may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.
- E. No permit (including a permit renewal or modification) shall be issued by the ~~board~~ department until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

**9VAC5-80-700. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.**

A. Upon the request of an applicant, any requirement of any regulation of the board (other than any requirement that is a federal applicable requirement) may be included as an applicable state requirement in a permit issued under this article.

B. If the applicant chooses to make a request under subsection A of this section, the provisions of this article pertaining to applicable state requirements shall apply.

C. The request under subsection A of this section shall be made by including the citation and description of any applicable requirement not defined as such in this article in the permit application submitted to the ~~board~~ department under 9VAC5-80-440 E.

**9VAC5-80-720. Insignificant activities.**

- A. Insignificant activities include the following emissions units:
1. Gas flares or flares used solely to indicate danger to the public.
  2. Ventilation systems not used to remove air contaminants generated by or released from specific units of equipment.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Air-conditioning units used for human comfort that do not have applicable requirements under Title VI of the Act.
4. Portable heaters which can reasonably be relocated through the manual labor of one person.
5. Portable electrical generators that can be moved by hand from one location to another.
6. Space heaters operating by direct heat or radiant heat transfer, or both.
7. Office activities and the equipment and implements used to carry out these activities, such as typewriters, printers, and pens.
8. Tobacco smoking rooms and areas.
9. Interior maintenance activities and the equipment and supplies used to carry out these activities, such as janitorial cleaning products and air fresheners, but not cleaning of production equipment.
10. Architectural maintenance and repair activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing and sandblasting, where no structural repairs are made in conjunction with the installation of new or permanent facilities.
11. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating or degreasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification.
12. Exterior maintenance activities conducted to take care of the grounds of the source, including lawn maintenance.
13. Internal combustion engines used for dry-cleaning and steam boilers.
14. Laundry activities, except for dry-cleaning and steam boilers.
15. Bathroom and locker room ventilation and maintenance.
16. Copying and duplication activities for internal use and support of office activities at the source.
17. Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source.
18. Equipment used solely for the purpose of preparing food to be eaten on the premises of industrial and manufacturing operations.
19. Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.
20. Safety devices.
21. Air contaminant detectors and test equipment.
22. Brazing, soldering or welding equipment used as an auxiliary to the principal equipment at the source.
23. The engine of any vehicle, including but not limited to any marine vessel, any vehicle running upon rails or tracks, any motor vehicle, any forklift, any tractor, or any mobile construction equipment, including any auxiliary engine that provides cooling or refrigeration of the vehicle.
24. Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

25. Emergency road flares.
26. Firefighting equipment and the equipment used to train firefighters.
27. Fire suppression systems.
28. Laboratories used solely for the purpose of quality control or environmental compliance testing that are associated with manufacturing, production or other industrial or commercial facilities.
29. Laboratories in primary and secondary schools and in schools of higher education used for instructional purposes.
30. Bench-scale laboratory equipment used for physical or chemical analysis, but no lab fume hoods or vents.
31. Routine calibration and maintenance of laboratory equipment or other analytical instruments.
32. Air compressors and pumps (engines for these emissions units are covered separately under subdivision C 1 of this section).
33. Pneumatically operated equipment, including hand tools.
34. Emergency (backup) electrical generators at residential locations.
35. Dumpster.
36. Grinding or abrasive blasting for nondestructive testing of metals.
37. Dryers and distribution systems for instrument air.
38. Parts washer (water-based).
39. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.
40. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.
41. Dispensing facilities for refueling diesel-powered vehicles or equipment, including any diesel fuel storage tank serving only such dispensing facility, to the extent that this activity is not regulated by § 111 or § 112 of the federal Clean Air Act.
42. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any volatile organic compound or hazardous air pollutant.
43. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.
44. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.
45. Laboratory analytical equipment and vents except at stationary sources primarily engaged in research and development.
46. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.
47. Nonroutine clean out of tanks and equipment for the purposes of worker entry or in preparation for maintenance or decommissioning.
48. Sampling connections and systems used exclusively to withdraw materials for testing and analysis including air contaminant detectors and vent lines.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

49. Vents from continuous emission monitors and other analyzers.
50. Maintenance activities such as hand-held or manually operated maintenance equipment, railroad track maintenance, repair and maintenance cleaning, and maintenance surface preparation activities.
51. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic.
52. Carbon monoxide lasers used only on metals and other materials which do not use hazardous air pollutants in the process.
53. Hand-held applicator equipment for hot melt adhesives with no volatile organic compounds in the adhesive formulation.
54. Equipment used for surface coating, painting, dipping, or spraying operations, except those that emit volatile organic compounds or hazardous air pollutants.
55. Drop hammers or hydraulic presses for forging or metalworking.
56. Blacksmith forges.
57. Solvent storage cabinet (containers covered).
58. Cooling ponds.
59. Coal pile run-off ponds.
60. Mechanical drive or gear boxes.
61. Equipment for steam cleaning or brushing dust off equipment.
62. Repair of residential units.
63. Farm equipment, with the exception of grain elevators or combustion devices not already listed as insignificant activities.
64. Water tanks.
65. Hydroblasting.
66. Hydraulic and hydrostatic testing equipment.
67. Process raw water treatment (e.g., phosphate).
68. Process water filtration systems and demineralizers.
69. Demineralized water tanks and demineralizer vents.
70. Ozone generators.
71. Water cooling tower except for systems including contact process water or water treated with chromium-based chemicals.
72. Spill collection tanks.
73. Steam vents and leaks from boilers and steam distribution systems.
74. Boiler water treatment operations, except cooling towers and those involving use of hydrazine.
75. Oxygen scavenging (de-aeration) of water.
76. Herbicide mixing and application activities not involving herbicide manufacture.
77. Nonhazardous boiler cleaning solutions.
78. Portable or mobile containers.
79. Vent or exhaust system for:
  - a. Transformer vaults and buildings;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- b. Electric motor and control panel vents; and
  - c. Deaerators and decarbonators.
80. Vents or stacks for sewer lines or enclosed areas required for safety or by code.
  81. Pump seals.
  82. Rupture discs for gas handling systems.
  83. Molasses storage tanks.
  84. Storage of substances in closed drums, barrels or bottles.
  85. Purging of natural gas lines.
  86. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.
  87. Blanking, chopping, trimming, perforating, repacking, and inspecting in connection with plastics manufacturing processes.
  88. Consumer use of paper trimmers/binders.
  89. Laser trimmers using dust collection to prevent fugitive emissions.
  90. Sealed batteries such as those used for emergency backup power supplies.
  91. Batteries and battery charging stations, except at battery manufacturing plants.
  92. Parking lot resurfacing.
  93. Environmental chambers not using hazardous air pollutant gases.
  94. Shock chambers.
  95. Humidity chambers.
  96. Solar simulators.
  97. Relief valves, excluding air pollution equipment bypass valves.
  98. Steam vents and safety relief valves.
  99. Steam leaks.
  100. Steam cleaning operations.
  101. Steam sterilizers.

B. Insignificant activities include emissions units, other than those listed in subsection A of this section, with the following emissions levels:

1. Emissions units with uncontrolled emissions of less than five tons per year of nitrogen dioxide, sulfur dioxide, or particulate matter (PM<sub>10</sub>). Particulate matter emissions shall be used to determine uncontrolled emissions for purposes of this subsection only if particulate matter (PM<sub>10</sub>) emissions cannot be quantified in a manner acceptable to the ~~board~~ department. If the particulate matter (PM<sub>10</sub>) emissions for any unit can be quantified in a manner acceptable to the ~~board~~ department, that unit shall be deemed insignificant for particulate matter;
2. Emissions units with uncontrolled emissions of less than five tons per year of volatile organic compounds;
3. Emissions units with uncontrolled emissions of less than five tons per year of carbon monoxide;
4. Emissions units with uncontrolled emissions of less than 0.6 tons per year of lead;
5. Emissions units with uncontrolled emissions of hazardous air pollutants at or below 1,000 pounds per year;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

6. Emissions units with uncontrolled emissions of any pollutant regulated under subpart C of 40 CFR Part 68 if those emissions are below the accidental release threshold levels set forth at 40 CFR 68.130 or 1,000 pounds per year, whichever is less.

C. Insignificant activities include emissions units, other than those listed in subsection A or B of this section, with the following sizes or production rates:

1. Internal combustion engines used for standby service, including compressors and pumps used for emergency replacement and portable generators, as follows:
  - a. Engines burning diesel fuel (maximum 0.5% sulfur) with 259,000 Btu per hour input or less;
  - b. Engines burning gasoline with 18,200 Btu per hour input or less.
2. Fuel burning equipment or combustion units with heat input levels less than:
  - a. 10 million Btu per hour rated input, using natural gas;
  - b. 1 million Btu per hour rated input, using distillate oil (maximum 0.5% sulfur).
3. Reservoirs and storage tanks for lubricant or used oil with a capacity of less than 1,000 gallons.
4. Internal combustion powered generators used at a facility only when power is unavailable to the facility from the utility as follows:
  - a. Diesel-fueled turbine emergency generators of 780 horsepower or less;
  - b. Diesel-fueled reciprocating emergency generators of 645 horsepower or less;
  - c. Natural gas-fueled turbine emergency generators of 1,240 horsepower or less;
  - d. Natural gas-fueled reciprocating emergency generators of 840 horsepower or less;
  - e. Dual-fueled reciprocating emergency generators of 840 horsepower or less.

**9VAC5-80-800. Applicability.**

Article 5

State Operating Permits

A. Within the limits of subsection C of this section, the provisions of this article apply to the operation of any stationary source or emissions unit of a regulated air pollutant.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Permits may be issued under this article in situations including, but not limited to, the following:

1. At the request of any owner:
  - a. To designate a stationary source or emissions unit as a synthetic minor;
  - b. To combine a stationary source's or emissions unit's requirements under multiple permits into one permit; or
  - c. To implement emissions trading requirements.
2. At the discretion of the ~~board~~ department:
  - a. To cap the emissions of a stationary source or emissions unit contributing to a violation of any air quality standard; or
  - b. To establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.

D. A permit may be issued under this article regardless of other permits in force provided that it does not contravene any provision of any of the other permits.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

E. For permits issued pursuant to the provisions of subdivision C 2 of this section, a permit application is not required from the stationary source or emissions unit, and the provisions of 9VAC5-80-830 and 9VAC5-80-860 do not apply.

**9VAC5-80-810. Definitions.**

A. For the purpose of this article and subsequent amendments or any orders issued by the ~~board~~ department, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meaning given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a pollutant from any stationary source or emissions unit. In general, actual emissions as of a particular date shall equal the highest annual rate, in tons per calendar year, at which the stationary source or emissions unit actually emitted a pollutant during the consecutive five-year period which precedes the particular date and which is representative of normal stationary source or emissions unit operation. The ~~board~~ department may allow the use of a different historical time period upon a determination that it is more representative of normal stationary source or emissions unit operation. Actual emissions shall be calculated using the stationary source's or emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

"Allowable emissions" means the emission rates of a stationary source or emissions unit calculated by using the maximum rated capacity of the emissions units within the stationary source or emissions unit (unless the stationary source or emissions unit is subject to state or federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

1. Applicable emission standards;
2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date; or
3. Any other applicable emission limitation, including those with a future compliance date.

"Complete application" or "complete request" means that the application or request contains all the information necessary for processing the application or request. Designating an application or request complete for purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting additional information.

"Contributing to a violation" means, in reference to the potential of a stationary source or emissions unit to emit any of the following pollutants, an air quality impact greater than any of the following amounts:

- Carbon monoxide -- 500  $\mu\text{g}/\text{m}^3$ , 8-hour average
- Carbon monoxide -- 2,000  $\mu\text{g}/\text{m}^3$ , 1-hour average
- Nitrogen dioxide -- 1  $\mu\text{g}/\text{m}^3$ , annual average
- PM<sub>10</sub> -- 1  $\mu\text{g}/\text{m}^3$ , annual average
- PM<sub>10</sub> -- 5  $\mu\text{g}/\text{m}^3$ , 24-hour average
- Sulfur dioxide -- 1  $\mu\text{g}/\text{m}^3$ , annual average
- Sulfur dioxide -- 5  $\mu\text{g}/\text{m}^3$ , 24-hour average
- Sulfur dioxide -- 25  $\mu\text{g}/\text{m}^3$ , 3-hour average

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Emissions cap" means any limitation on the rate of emissions of any regulated air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the ~~board or the~~ department and meet the following criteria:

1. Are permanent.
2. Contain a legal obligation for the owner to adhere to the terms and conditions.
3. Do not allow a relaxation of a requirement of the implementation plan.
4. Are technically accurate and quantifiable.
5. Identify an averaging time that allows at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance.
6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Existing stationary source" means any stationary source other than a new source.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emission limitations and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in an operating permit issued pursuant to a program approved by the U.S. Environmental Protection Agency in accordance with 40 CFR Part 70, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.
4. Limitations and conditions that are part of the implementation plan.
5. Limitations and conditions that are part of a permit issued under the new source review program.
6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the U.S. Environmental Protection Agency into an implementation plan as meeting the U.S. Environmental Protection Agency's minimum criteria for federal enforceability, including adequate notice and opportunity for the U.S. Environmental Protection Agency and public comment prior to issuance of the final permit and practicable enforceability.
7. Limitations and conditions in a regulation of the board or in a Virginia program that has been approved by the U.S. Environmental Protection Agency under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
8. Individual consent agreements that the U.S. Environmental Protection Agency has legal authority to create.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-1030.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant.

"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972, and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

"New source review program" means a program for the preconstruction review and permitting of new sources or emissions units or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or which is shown by an air quality impact analysis (using modeling or other methods determined by the ~~board~~ department to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or future emissions data.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a stationary source.

"Potential to emit" means the maximum capacity of a stationary source or emissions unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source or emissions unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source or emissions unit.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.
2. Any pollutant for which an ambient air quality standard has been promulgated.
3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.
5. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR 68.
6. Any pollutant subject to a regulation adopted by the board.
7. Any pollutant subject to regulation under the Virginia Air Pollution Control Law.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source, but do not come from the major stationary source itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source. Secondary emissions do not include any emissions which come directly

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"State-enforceable" means all limitations and conditions which are enforceable as a practical matter, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order, regulation of the board, or variance, and any permit requirements established pursuant to 9VAC5 Chapter 80 (9VAC5-80-10 et seq.).

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable limits, by federally enforceable limits, or by both so as to place that stationary source below the threshold at which it would be subject to permit or other requirements in regulations of the board or in the federal Clean Air Act.

**9VAC5-80-820. General.**

A. The ~~board~~ department may issue permits whose applicability is limited to one specific pollutant or to multiple specific pollutants emitted by a stationary source or emissions unit. It may also issue permits whose applicability is limited to one specific emissions unit or multiple specific emissions units within a stationary source. The issuance of such permits may occur in any of the situations specified in 9VAC5-80-800 C.

B. The ~~board~~ department may combine the requirements of and the permits for emissions units within a stationary source or emissions unit subject to 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) into one permit. The ~~board~~ department may likewise combine the requirements of and applications for permits for emissions units within a stationary source or emissions unit required by 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) into one application.

C. Permits issued under the provisions of ~~9VAC5-80-10 or~~ Article 6 (9VAC5-80-1100 et seq.), Article 8 (9VAC5-80-1700 et seq.) or Article 9 (9VAC5-80-2000 et seq.) of this part may be considered as having met the requirements of this article but shall be subject to the provisions of 9VAC5-80-950, 9VAC5-80-960, 9VAC5-80-970, 9VAC5-80-980, 9VAC5-80-990, 9VAC5-80-1000, and 9VAC5-80-1010.

D. No provision of regulations of the board shall limit the power of the ~~board~~ department to issue an operating permit pursuant to this article in order to remedy a condition that may cause or contribute to the endangerment of human health or welfare.

E. Any decisions of the ~~board~~ department made pursuant to this article may be appealed pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5 Chapter 170.

F. In order for a permit issued pursuant to this article to be federally enforceable, the following conditions shall be met:

1. The permit shall include a legal obligation that the permittee adhere to the terms and limitations of the permit.
2. The permit shall conform to the requirements of this article and to the requirements of any regulations of the U.S. Environmental Protection Agency that form the basis for this article.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. The permit shall contain emission limits, controls, and other requirements that are at least as stringent as any applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan.
4. The emission limits, controls, and other requirements of the permit shall be permanent, quantifiable, and enforceable as a practical matter.
5. The permit shall be issued subject to the public participation requirements of 9VAC5-80-1020.
6. A copy of the proposed (draft) and final permit shall be sent to the U.S. Environmental Protection Agency on a timely basis.

G. Notwithstanding the provisions of subsection F of this section, no provision of this article shall be interpreted to prevent the ~~board~~ department from issuing a permit that is not federally enforceable and, if appropriate, seeking approval of the permit under the then-current regulations and policies of the U.S. Environmental Protection Agency.

**9VAC5-80-830. Applications.**

A. For permits issued under the provisions of 9VAC5-80-800 C 1, a single complete application is required identifying each emissions unit to be covered by the permit. The application shall be submitted according to procedures approved by the ~~board~~ department. Where several units are included in one stationary source, a single complete application shall be submitted covering all units which are to be permitted in the stationary source. A separate complete application is required for each stationary source.

B. Any application form, report, or compliance certification submitted to the ~~board~~ department shall meet the requirements of 9VAC5-20-230.

**9VAC5-80-840. Application information required.**

- A. The ~~board~~ department shall furnish application forms to applicants.
- B. Each application for a permit under the provisions of 9VAC5-80-800 C 1 shall include, but not be limited to, the following:
  1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.
  2. A description of the source's processes and products (by Standard Industrial Classification Code).
  3. All emissions of regulated air pollutants.
    - a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit to be covered by the permit.
    - b. Emissions shall be calculated as required in the permit application form or instructions.
    - c. Fugitive emissions shall be included in the permit application to the extent quantifiable.
  4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.
  5. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.
  6. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

7. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any additional information or documentation that the ~~board~~ department deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the ~~board~~ department.

D. For permits issued pursuant to the provisions of 9VAC5-80-800 C 2, the provisions of subsections A and B of this section do not apply.

E. For permits issued pursuant to the provisions of 9VAC5-80-800 C 2, the ~~board~~ department may request any information or documentation that it deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit.

**9VAC5-80-850. Standards and conditions for granting permits.**

A. A permit may be granted pursuant to this article if it is shown to the satisfaction of the ~~board~~ department that the following standards and conditions will be met:

1. The stationary source or emissions unit shall operate without causing a violation of the applicable provisions of regulations of the board;

2. The stationary source or emissions unit shall be in compliance with all applicable emission standards or meet the provisions of any administrative enforcement mechanism issued pursuant to 9VAC5-170-120; and

3. The stationary source or emissions unit shall operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted so as not to prevent or interfere with the attainment or maintenance of any applicable ambient air quality standard.

B. Permits may be granted to stationary sources or emissions units located in nonattainment areas provided the requirements of subdivisions A 1 and 2 of this section are met.

C. Permits granted pursuant to this article may contain emission standards as necessary to implement the provisions of this article. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued; or

b. The emission rate based on the potential to emit of the emissions unit.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Emission standards shall only include limitations that are determined by the ~~board~~ department to be achievable through application of production processes or available methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, or substitution of less toxic or nontoxic materials.

4. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

D. In consideration of the factors specified below, the owner may propose and the ~~board~~ department may establish an alternative emission standard provided the owner demonstrates to the satisfaction of the ~~board~~ department that it meets the standards and conditions in subsection A and subdivision C 2 of this section and is enforceable as a practical matter.

1. The impact upon the ability of the stationary source or emissions unit to operate in a competitive and efficient manner.

2. The previous efforts to reduce actual emissions taken at the owner's initiative.

3. The technological and economic practicality of reducing emissions.

4. The impact upon the availability and cost of fuels and process materials.

E. An emission standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subsection A of this section and the increased emissions levels would not make the stationary source or emissions unit subject to the new source review program.

F. Operating permits issued under this article may contain, but not be limited to, any the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards as set out in this section.

2. Conditions necessary to enforce emission standards. Conditions to provide enforceability may include, but not be limited to, the following:

a. Limit on fuel sulfur content;

b. Limit on production rates with time frames as appropriate to support the emission standards in this section;

c. Limit on raw material usage rate; and

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

4. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

5. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, the following:

a. Pressure indicators and required pressure drop;

b. Temperature indicators and required temperature;

c. pH indicators and required pH; and

d. Flow indicators and required flow.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.
7. Stack test requirements.
8. Reporting or recordkeeping requirements, or both.
9. Continuous emission or air quality monitoring requirements, or both.
10. Compliance schedules.
11. Other requirements as may be necessary to ensure compliance with the applicable state and federal regulations.

G. Permits granted pursuant to this article shall contain terms and conditions to the extent necessary to ensure that:

1. The permit meets the requirements of this article;
2. The permit is enforceable as a practical matter; and
3. The permittee adheres to the terms and conditions of the permit.

**9VAC5-80-860. Action on permit application.**

A. After receipt of an application or any additional information, the ~~board~~ department shall advise the applicant in writing of any deficiency in such application or information no later than 30 days after receipt of the application or additional information.

B. The ~~board~~ department will normally process an application according to the steps specified in subdivisions 1 through 5 of this subsection. Processing time for these steps is normally 90 days following receipt of a complete application. If a public comment period is required, processing time is normally 180 days following receipt of a complete application. The ~~board~~ department may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-870 and the preliminary determination of the ~~board~~ department;
2. Inspect the stationary source or emissions unit, provided an inspection has not been conducted within the last six months;
3. When required, complete the public participation requirements in accordance with 9VAC5-80-1020;
4. Consider the public comments received in accordance with 9VAC5-80-1020; and
5. Complete the final review and analysis and the final determination of the ~~board~~ department.

C. The ~~board~~ department will normally take final action on an application after completion of the steps in subsection B of this section except in cases where a public hearing to provide the opportunity for interested persons to contest the application is granted pursuant to 9VAC5-80-35. The ~~board~~ department will review any request made under 9VAC5-80-1020 C, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

D. The ~~board~~ department shall issue the permit or notify the applicant in writing of its decision, with its reasons, not to issue the permit.

E. Within five days after receipt of the permit pursuant to subsection B of this section, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the ~~board~~ department upon request.

F. Appeals of decisions rendered pursuant to this article shall follow the procedures outlined in Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

G. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

**9VAC5-80-870. Application review and analysis.**

A. No permit shall be granted pursuant to this article unless compliance with the standards in 9VAC5-80-850 is demonstrated to the satisfaction of the ~~board~~ department by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if each emissions unit that is to be permitted within the stationary source is equipped to comply with all applicable emission standards.
2. Applications may be subject to an air quality analysis to determine the impact of pollutant emissions.

B. If the ~~board~~ department has reason to believe that a source may be in violation of an air quality standard, it may require an air quality impact model. All applications of air quality modeling involved in any air quality analysis required by this article shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W to 40 CFR Part 51.

C. Where an air quality impact model specified in Appendix W to 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the ~~board~~ department must be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to notice and opportunity for public comment under 9VAC5-80-1020.

**9VAC5-80-880. Compliance determination and verification by testing.**

A. The ~~board~~ department may require owners of sources subject to this article to conduct such tests as are necessary to determine the type or amount or both of the pollutants emitted from the stationary source or emissions unit or whether the stationary source or emissions unit will be in compliance with any provisions of any regulation of the board. Such tests shall be conducted in a manner acceptable to the ~~board~~ department.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Part I (9VAC5-40-10 et seq.) of 9VAC5 Chapter 40, Part I (9VAC5-50-10 et seq.) of 9VAC5 Chapter 50, and Part I (9VAC5-60-10 et seq.) of 9VAC5 Chapter 60, as applicable, or by other means acceptable to the ~~board~~ department.

**9VAC5-80-890. Monitoring requirements.**

A. The ~~board~~ department may require owners of stationary sources subject to this article to install, calibrate, operate and maintain equipment for continuously monitoring and recording emissions or process parameters or both, and establish and maintain records, and make periodic emission reports as the ~~board~~ department may prescribe. These requirements shall be conducted in a manner acceptable to the ~~board~~ department.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Part I (9VAC5-40-10 et seq.) of 9VAC5 Chapter 40, Part I (9VAC5-50-10 et seq.) of 9VAC5 Chapter 50, and Part I (9VAC5-60-10 et seq.) of 9VAC5 Chapter 60, as applicable, or by other means acceptable to the ~~board~~ department.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-900. Reporting requirements.**

A. The board department may require owners of stationary sources subject to this article to establish and maintain records, provide notifications and reports, revise reports, report emission tests or monitoring results in a manner and form and using procedures as the board department may prescribe. Any records, notifications, reports, or tests required under this section shall be retained by the owner for at least three years following the date of such records, notifications, reports or tests. If an owner wishes to request the establishment of an average emissions baseline for a period longer than three years, that owner must maintain records for that period.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Part I (9VAC5-40-10 et seq.) of 9VAC5 Chapter 40, Part I (9VAC5-50-10 et seq.) of 9VAC5 Chapter 50, and Part I (9VAC5-60-10 et seq.) of 9VAC5 Chapter 60, as applicable, or by other means acceptable to the board department.

C. If a stationary source or emissions unit is shut down, the owner shall notify the board department within six months of the date the stationary source or emissions unit is shut down and the provisions of 9VAC5-80-950 shall apply.

**9VAC5-80-930. Compliance with local zoning requirements.**

No provision of this article or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the stationary source is located provided, however, that such compliance does not relieve the board department of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

**9VAC5-80-940. Transfer of permits.**

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership or name change of a stationary source, the new owner shall abide by any current permit issued to the previous owner or to the same owner under the previous source name. The new owner shall notify the board department of the change in ownership or source name or both within 30 days of the transfer or name change.

**9VAC5-80-950. Termination of permits.**

A. A permit or any amendment thereof shall be valid for the life of the source unless the board department terminates the permit under the conditions of subsections B or C of this section.

B. The board department may terminate a permit with the consent of the owner for good cause shown by the owner or on its own motion provided that the termination is accomplished in accordance with the provisions of regulations of the board and the Administrative Process Act.

C. Upon a final determination that a stationary source or emissions unit is shut down permanently, the board department shall revoke any permits for that source or emissions unit in accordance with 9VAC5-20-220.

**9VAC5-80-960. Changes to permits.**

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-970 through 9VAC5-80-1000.
2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board department as specified in subsection C of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) of this part.

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the ~~board~~ department for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9VAC5-80-970 through 9VAC5-80-990.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-1000.

**9VAC5-80-970. Administrative permit amendments.**

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-940 have been fulfilled.

4. The combining of permits as provided in 9VAC5-80-800 C 1 b.

B. The administrative permit amendment procedures are as follows:

1. The ~~board~~ department will normally take final action on a complete request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department shall incorporate the changes without providing notice to the public under 9VAC5-80-1020. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**9VAC5-80-980. Minor permit amendments.**

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable regulatory requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard;

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

- a. An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and
  - b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;
5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and
6. Are not required to be processed as a significant amendment under 9VAC5-80-990; or as an administrative permit amendment under 9VAC5-80-970.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program. Minor permit amendment procedures may also be used to require more frequent monitoring or reporting by the permittee or to reduce the level of an emissions cap.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit provided there is made by the ~~board~~ department and the owner a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.
2. A request that such procedures be used.

E. The public participation requirements of 9VAC5-80-1020 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department will do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.
3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the complete request is filed.
2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

period, the existing permit terms and conditions he seeks to modify may be enforced against him.

**9VAC5-80-990. Significant amendment procedures.**

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requests for permit amendments that do not qualify as minor permit amendments under 9VAC5-80-980 or as administrative amendments under 9VAC5-80-970.

2. Significant amendment procedures shall be used for those permit amendments that:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act.

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

B. A request for a significant permit amendment shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

C. The provisions of 9VAC5-80-1020 shall apply to applications made under this section.

D. The ~~board~~ department will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a request is normally 180 days following receipt of a complete request except in cases where a public hearing to provide the opportunity for interested persons to contest the request is granted pursuant to 9VAC5-80-35. The ~~board~~ department may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the ~~board~~ department under subsection D of this section.

**9VAC5-80-1000. Reopening for cause.**

A. A permit may be reopened and revised in any of the following situations:

1. Additional regulatory requirements or changes to existing requirements become applicable to emissions units or pollutants covered by the permit.

2. The ~~board~~ department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. The board department determines that the permit must be revised to assure compliance with the applicable regulatory requirements or that the conditions of the permit will not be sufficient to meet all of the standards and requirements contained in this article.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board department at least 30 days in advance of the date that the permit is to be reopened, except that the board department may provide a shorter time period in the case of an emergency.

**9VAC5-80-1010. Enforcement.**

A. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board department may deem necessary to ensure compliance with all applicable standards.

B. Regardless of the provisions of 9VAC5-80-950, the board department may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;
4. Causes emissions from the stationary source or emissions unit which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or
5. Fails to comply with the applicable provisions of ~~9VAC5-80-10~~ and Article 6 (9VAC5-80-1100 et seq.), Article 8 (9VAC5-80-1700 et seq.) , and Article 9 (9VAC5-80-2000 et seq.) of this part.

C. The board department may suspend, under such conditions and for such period of time as the board department may prescribe, any permit for any of the grounds for revocation contained in subsection B of this section or for any other violations of regulations of the board.

D. Violation of regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part I (9VAC5-20-10 et seq.) of 9VAC5 Chapter 20 and §§ 10.1-1309, 10.1-1311 and 10.1-1316 of the Virginia Air Pollution Control Law.

E. The board department shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit.

F. Nothing in the regulations of the board shall be construed to prevent the board department and the owner from making a mutual determination that a permit is invalid or revoked prior to any final decision rendered under subsection B of this section.

G. Nothing in the regulations of the board shall be construed to prevent the board department and the owner from making a mutual determination that a permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-1020. Public participation.**

A. Prior to the decision of the ~~board~~ department, permit applications for permits containing provisions that are necessary for the permit to be federally enforceable shall be subject to a public comment period of at least 30 days.

B. When a public comment period is required, the ~~board~~ department shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment on the information available for public inspection under the provisions of subsection A of this section. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9VAC5-170-60), as well as the preliminary review and analysis and preliminary determination of the ~~board~~ department, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all affected local air pollution control agencies, to all states sharing the affected air quality control region, to the regional administrator of the U.S. Environmental Protection Agency, and to any other governmental entity required to be notified under state or federal law or regulation.

C. Following the initial publication of the notice required under subsection B of this section, the ~~board~~ department will receive written requests for a public hearing to contest the preliminary determination of the ~~board~~ department pursuant to the requirements of 9VAC5-80-35. In order to be considered, the request shall be submitted no later than the end of the comment period. ~~Request~~ Requests for a public hearing shall contain the following information:

1. The name, ~~and postal mailing or email address, and telephone number~~ of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative ~~(for the purposes of this requirement, an unincorporated association is a person);~~ for the purposes of this requirement, "person" includes an unincorporated association;

3. The reason ~~why a public hearing is requested~~ for the request for a public hearing;

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or ~~preliminary tentative~~ determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, amendment, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

D. The ~~board~~ department will review any request made under subsection C of this section, and will take final action on the request as provided in 9VAC5-80-860 C.

**9VAC5-80-1030. General permits.**

A. The requirements for issuance of a general permit regulation are as follows:

1. The board may issue a general permit regulation covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. All stationary sources or emissions units in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.
  - b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.
  - c. Stationary sources or emissions units shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.
2. Stationary sources or emissions units subject to a general permit shall comply with all requirements applicable to other permits issued under this article.
  3. General ~~permits~~ permit regulations shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.
  4. General ~~permits~~ permit regulations shall be issued in accordance with ~~§ 9-6.14:4.1 C 44~~ § 2.2-4006 A 9 of the Administrative Process Act.
  5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:
    - a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit regulation.
    - b. The criteria to be used in determining which stationary sources or emissions units qualify for the general permit.
    - c. A brief description of the stationary source or emissions unit category that the department believes qualifies for the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category.
    - d. A narrative statement of the estimated air quality impact contributed by the stationary source or emissions unit category covered by the general permit including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable.
    - e. A brief description of the application process to be used by stationary sources or emissions units to request coverage under the general permit regulation.
    - f. A brief description of the comment procedures required by 9VAC5-80-1020.
- B. The requirements for application for a general permit are as follows:
1. Stationary sources or emissions units that would qualify for a general permit shall apply to the ~~board~~ department for coverage under the terms of the general permit regulation. Stationary sources or emissions units that do not qualify for a general permit shall apply for coverage under a permit issued under the other provisions of this article.
  2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.
  3. Stationary sources or emissions units that become subject to the general permit after it is issued to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the ~~board~~ department using the application process described in the general permit. The ~~board~~ department shall issue the general

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.

C. The requirements for issuance of a general permit are as follows:

1. The ~~board~~ department shall grant the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.
2. The issuance of a permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-1020.
3. A response to each general permit application may not be provided. The general permit regulation may specify a reasonable time period after which a stationary source or emissions unit that has submitted a complete application shall be deemed to be authorized to operate under the general permit.
4. Stationary sources or emissions units covered under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is covered by the general permit.
5. The general permit regulation shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. The requirements for enforcement of a general permit are as follows:

1. The stationary source or emissions unit shall be subject to enforcement action under 9VAC5-80-1010 for operation without a permit issued under this article if the stationary source or emissions unit is later determined by the ~~board~~ department or the administrator not to qualify for the conditions and terms of the general permit.
2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.

**9VAC5-80-1040. ~~Review and evaluation of article.~~ (Repealed.)**

~~A. Prior to April 1, 2001, the department shall perform an analysis on this article and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the article; (ii) alternatives which would achieve the stated purpose of this article in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this article; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this article which are more stringent than federal requirements; and (v) the results of a review as to whether this article is clearly written and easily understandable by affected entities.~~

~~B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this article without amendment, (ii) repeal this article, or (iii) amend this article. If the board's decision is to repeal or amend this article, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

**9VAC5-80-1100. Applicability.**

Article 6

Permits for New and Modified Stationary Sources

A. Except as provided in subsection C of this section, the provisions of this article apply to (i) the construction of any new stationary source or any project (which includes any addition or

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

replacement of an emissions unit, any modification to an emissions unit or any combination of these changes), and (ii) the reduction of any stack outlet elevation at any stationary source.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Except as provided in subdivision 3 of this subsection, the provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of 9VAC5-80-1105.

1. Exemption from the requirement to obtain a minor NSR permit shall not relieve any owner of the responsibility to comply with any other applicable provisions of regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

2. Any stationary source, emissions unit or facility which is exempt from the provisions of this article based on the criteria in 9VAC5-80-1105 but which exceeds the applicability thresholds for any applicable emission standard in 9VAC5-40 (Existing Stationary Sources) if it were an existing source or any applicable standard of performance in 9VAC5-50 (New and Modified Stationary Sources) shall be subject to the more restrictive of the provisions of either the emission standard in 9VAC5-40 (Existing Stationary Sources) or the standard of performance in 9VAC5-50 (New and Modified Stationary Sources).

3. Any new stationary source or project that would be subject to the provisions of this article except for being exempt based on one or more of the criteria in 9VAC5-80-1105 may opt to be subject to this article notwithstanding the exemptions in 9VAC5-80-1105. The provisions of this article shall apply to the new stationary source or project as if the applicable exemption criteria did not apply. Opting in to the minor NSR program shall not affect the applicability of such exemptions to any subsequent project.

D. Except as provided in 9VAC5-80-1105 C 3 and D 3, fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article.

E. Where construction of a new stationary source or a project is accomplished in contemporaneous increments that individually are not subject to approval under this article and that are not part of a program of construction of a new stationary source or project in planned incremental phases approved by the ~~board~~ department, all such increments shall be added together for determining the applicability of any particular change under the provisions of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before commencing construction on the particular change and the date that the emissions increase from the particular change occurs.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a stationary source which, except for the pattern of ownership or development, would otherwise require a minor NSR permit.

G. No provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article.

H. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources" or "stationary sources" are applicable to the construction, relocation, replacement, or modification of all stationary sources (including

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of the major new source review program.

2. Provisions referring to "major stationary sources" are applicable to the construction, relocation, or replacement of all major stationary sources subject to this article. Provisions referring to "major modifications" are applicable to major modifications of major stationary sources subject to this article.

3. In cases where the provisions of the major new source review program conflict with those of this article, the provisions of the major new source review program shall prevail.

4. Provisions referring to "state and federally enforceable" or "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a minor NSR permit designated state-only enforceable under 9VAC5-80-1120 F.

I. For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and the applicable article of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources). Implementation of the federal hazardous air pollutant new source review program shall be independent of applicability and exemption criteria of this article. Additional details may be found in subdivisions 1, 2, and 3 of this subsection. Minor NSR permits shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9VAC5-80-1150 and 9VAC5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9VAC5 60 60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D, and E. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60. Any information regarding how minor NSR permits are to be issued to a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

review program under the provisions of this article may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. The provisions of 40 CFR 63.40 through 40 CFR 63.44 for issuing approvals to construct a new source or reconstruct a source listed in the source category schedule for standards and to construct a new major source or reconstruct a major source even if the source category is not listed in the source category schedule for standards. These provisions of the federal hazardous air pollutant new source review program shall not be implemented through this article but shall be implemented through Article 7 (9VAC5-80-1400 et seq.) of this part.

J. Unless otherwise approved by the ~~board~~ department or prescribed in the regulations of the board, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-1160 B prior to November 7, 2012,. Any minor NSR permit applications that have not been determined to be complete as of November 7, 2012, shall be subject to the new provisions of this article.

K. The provisions of 40 CFR Parts 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources) and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

L. The provisions of 40 CFR Parts 51, 58, 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

M. Particulate matter (PM<sub>2.5</sub>) emissions and particulate matter (PM<sub>10</sub>) emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in minor NSR permits. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section.

**9VAC5-80-1105. Permit exemptions.**

A. The general requirements for minor NSR permit exemptions are as follows:

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section. In determining whether a source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D of this section taken as a group and under the provisions of subsections E and F of this section to be exempt from this article.

b. Vegetative waste recycling/mulching operations that do not exceed 2100 hours of operation in any 12-month consecutive period at a single stationary source. To qualify as an exemption under this subdivision, the total rated capacity of all diesel engines at the source, including portable diesel engines temporarily located at the site, may not exceed 1200 brake horsepower (output).

c. The location of a portable emissions unit at a site subject to the following conditions:  
(1) Any new emissions from the portable emissions unit are secondary emissions.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- (2) The portable emissions unit is either subject to (i) a minor NSR permit authorizing the emissions unit as a portable emissions unit subject to this subdivision or (ii) a general permit.
  - (3) The emissions of the portable emissions unit at the site would be temporary.
  - (4) The portable emissions unit would not undergo modification or replacement that would be subject to this article.
  - (5) The portable emissions unit is suitable to the area in which it is to be located.
  - (6) Reasonable notice is given to the ~~board~~ department prior to locating the emissions unit to the site identifying the proposed site and the probable duration of operation at the site. Such notice shall be provided to the ~~board~~ department not less than 15 days prior to the date the emissions unit is to be located at the site unless a different notification schedule is previously approved by the ~~board~~ department.
  - d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9VAC5-20-220.
  - e. The use by any existing stationary source or emissions unit of an alternative fuel or raw material, if the following conditions are met:
    - (1) The owner demonstrates to the ~~board~~ department that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.
    - (2) The use of an alternative fuel or raw material would not be subject to review under this article as a project.
2. The provisions of this article do not apply to the following stationary sources or emissions units provided the stationary source or emissions unit is (i) exempt under the provisions of subsections E and F of this section and (ii) meets any other applicable criteria or conditions set forth in this subdivision.
- a. Replacement of an emissions unit subject to the following criteria:
    - (1) The replacement emission unit is (i) of an equal or lesser size and (ii) of an equal or lesser rated capacity as compared to the replaced emissions unit.
    - (2) The replacement emissions unit is functionally equivalent to the replaced emissions unit.
    - (3) The replacement emissions unit does not change the basic design parameters of the process operation.
    - (4) The potential to emit of the replacement emissions unit does not exceed the potential to emit of the replaced emissions unit. If the replaced emissions unit is subject to terms and conditions contained in a minor NSR permit, the owner may, concurrently with the notification required in subdivision (6) of this subdivision, request a minor amendment as provided in 9VAC5-80-1280 B 4 to that permit to apply those terms and conditions to the replacement emissions unit. However, the replacement emissions unit's potential to emit is not limited for the purposes of this subdivision unless (and until) the requested minor permit amendment is granted by the ~~board~~ department.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- (5) The replaced emissions unit is either removed or permanently shut down in accordance with the provisions of 9VAC5-20-220.
  - (6) The owner notifies the ~~board~~ department, in writing, of the proposed replacement at least 15 days prior to commencing construction on the replacement emissions unit. Such notification shall include the size, function, and rated capacity of the existing and replacement emissions units and the registration number of the affected stationary source.
    - b. A reduction in stack outlet elevation provided that the stack serves only facilities that have been previously determined to be exempt from the minor NSR program.
  3. In determining whether a facility is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9VAC5-40 (Existing Stationary Sources) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the ~~board~~ department.
  4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the ~~board~~ department that the facility was exempt at the time a minor NSR permit would have otherwise been required under this article.
- B. Facilities as specified below shall be exempt from the provisions of this article.
1. Fuel burning equipment units (external combustion units, not engines and turbines) and space heaters in a single application as follows:
    - a. Except as provided in subdivision b of this subdivision, the exemption thresholds in subdivisions (1) through (4) of this subdivision shall be applied on an individual unit basis for each fuel type.
      - (1) Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.
      - (2) Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.
      - (3) Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.
      - (4) Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour.
    - b. In ozone nonattainment areas designated in 9VAC5-20-204 or ozone maintenance areas designated in 9VAC5-20-203, the exemption thresholds in subdivision a of this subdivision shall be applied in the aggregate for each fuel type.
  2. Engines and turbines that are used for emergency purposes only and that do not individually exceed 500 hours of operation per year at a single stationary source as follows. All engines and turbines in a single application must also meet the following criteria to be exempt.
    - a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.
    - b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.
    - c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).
  3. Engines that power mobile sources during periods of maintenance, repair, or testing.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

4. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:
  - a. Volatile organic compound transfer operations involving:
    - (1) Any tank of 2,000 gallons or less storage capacity; or
    - (2) Any operation outside the volatile organic compound emissions control areas designated in 9VAC5-20-206.
  - b. Volatile organic compound storage operations involving any tank of 40,000 gallons or less storage capacity.
5. Vehicle customizing coating operations, if production is less than 20 vehicles per day.
6. Vehicle refinishing operations.
7. Coating operations for the exterior of fully assembled aircraft or marine vessels.
8. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and any operation or facility specified below:
  - a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.
  - b. Gasoline dispensing facilities.
  - c. Gasoline bulk loading operations at bulk plants:
    - (1) With an expected daily throughput of less than 4,000 gallons, or
    - (2) Located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.
  - d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.
  - e. Petroleum liquid storage operations involving:
    - (1) Any tank of 40,000 gallons or less storage capacity;
    - (2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or
    - (3) Any tank storing waxy, heavy pour crude oil.
9. Petroleum dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9VAC5-50-410.
10. Any addition of, relocation of, or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.
12. Exhaust flares at natural gas and coalbed methane extraction wells.
13. Temporary facilities subject to the following conditions:
  - a. The operational period of the temporary facility (the period from the date that the first pollutant-emitting operation is commenced to the date of shutdown of the temporary facility) is 12 months or less.
  - b. The uncontrolled emissions rate of any regulated air pollutant that would be emitted from the temporary facility during the operational period does not exceed the applicable exempt emission rate as set forth in 9VAC5-80-1105 C (exemption rates for new stationary sources) or 9VAC5-80-1105 D (exemption rates for projects). The uncontrolled emission rate may be calculated based upon the total number of hours in the operational period instead of 8760 hours. All temporary facilities that will be co-located at a stationary source shall be considered in the aggregate when calculating the uncontrolled emissions rate under this subdivision.
  - c. Upon completion of the operational period, the temporary facility shall be either (i) shut down in accordance with 9VAC5-20-220 or (ii) returned to its original state and condition unless, prior to the end of the operational period, the owner demonstrates in writing to the satisfaction of the ~~board~~ department that the facility is exempt under 9VAC5-80-1105 C (exemption rates for new stationary sources) or D (exemption rates for new stationary projects) using 8760 hours of operation per year.
  - d. Not less than 30 calendar days prior to commencing the operational period, the owner shall notify the ~~board~~ department in writing of the proposed temporary facility and shall provide (i) calculations demonstrating that the temporary facility is exempt under this subdivision and under 9VAC5-80-1105 E and F and (ii) proposed dates for commencing the first pollutant-emitting operation and shutdown of the temporary facility.
  - e. The owner shall provide written notifications to the ~~board~~ department of (i) the actual date of commencing the first pollutant-emitting operation and (ii) the actual date of shutdown of the temporary facility. Notifications shall be postmarked not more than 10 days after such dates.
14. Open pit incinerators subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the purpose of disposal of clean burning waste and debris waste.
15. Poultry or swine incinerators located on a farm where all of the following conditions are met:
  - a. Auxiliary fuels for the incinerator unit shall be limited to natural gas, liquid petroleum gas, and/or distilled petroleum liquid fuel. Solid fuels, waste materials, or residual petroleum oil products shall not be used to fire the incinerator.
  - b. The waste incinerated shall be limited to pathological waste (poultry or swine remains). Litter and animal bedding or any other waste materials shall not be incinerated.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- c. The design burn rate or capacity rate of the incinerator shall be 400 pounds per hour or less of poultry or swine. This value shall apply only to the mass of the poultry or swine and shall not include the mass of the fuel.
- d. The incinerator shall be used solely to dispose of poultry or swine originating on the farm where the incinerator is located.
- e. The incinerator shall be owned and operated by the owner or operator of the farm where the incinerator is located.
- f. The incinerator shall not be charged beyond the manufacturer's recommended rated capacity.
- g. Records shall be maintained on site to demonstrate compliance with the conditions for this exemption, including but not limited to the total amount of pathological waste incinerated and the fuel usage on a calendar year quarterly basis.

C. The exemption of new stationary sources shall be determined as specified below:

1. New stationary sources with uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate of a new stationary source is the sum of the uncontrolled emission rates of the individual affected emissions units. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting new stationary sources under this subsection.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Particulate Matter (PM <sub>10</sub> )	15 tpy
Particulate Matter (PM <sub>2.5</sub> )	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H <sub>2</sub> S)	9 tpy
Total Reduced Sulfur (including H <sub>2</sub> S)	9 tpy
Reduced Sulfur Compounds (including H <sub>2</sub> S)	9 tpy
Municipal waste combustor organics (measured as total tetra-throughocta-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 <sup>-6</sup> tpy

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO <sub>2</sub> and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM<sub>10</sub> or PM<sub>2.5</sub>) emissions for a stationary source can be determined in a manner acceptable to the board department and the stationary source is deemed exempt using the emission rate for particulate matter (PM<sub>10</sub> or PM<sub>2.5</sub>), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM<sub>10</sub> or PM<sub>2.5</sub>) cannot be determined in a manner acceptable to the board department, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a new stationary source if all of the emissions considered in calculating the uncontrolled emission rate of the new stationary source are fugitive emissions.

D. The exemption of projects shall be determined as specified below:

1. A project that would result in increases in uncontrolled emission rates at the stationary source less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate increase of a project is the sum of the uncontrolled emission rate increases of the individual affected emissions units. Uncontrolled emissions rate decreases are not considered as part of this calculation. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting projects under this subsection.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	10 tpy
Sulfur Dioxide	10 tpy
Particulate matter	15 tpy
Particulate matter PM <sub>10</sub>	10 tpy
Particulate matter (PM <sub>2.5</sub> )	6 tpy
Volatile organic compounds	10 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H <sub>2</sub> S)	9 tpy
Total Reduced Sulfur (including H <sub>2</sub> S)	9 tpy

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

Reduced Sulfur Compounds (including H <sub>2</sub> S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 <sup>-6</sup> tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO <sub>2</sub> and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM<sub>10</sub> or PM<sub>2.5</sub>) emissions for a stationary source can be determined in a manner acceptable to the ~~board~~ department and the stationary source is deemed exempt using the emission rate for particulate matter (PM<sub>10</sub> or PM<sub>2.5</sub>), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM<sub>10</sub> or PM<sub>2.5</sub>) cannot be determined in a manner acceptable to the ~~board~~ department, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a project if all of the emissions considered in calculating the uncontrolled emission rate increase of the project are fugitive emissions.

E. Exemptions for stationary sources of toxic pollutants not subject to the federal hazardous air pollutant new source review program shall be as follows:

1. Stationary sources exempt from the requirements of Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) as provided in 9VAC5-60-300 C 1, C 2, C 7, D, or E shall be exempt from the provisions of this article.

2. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the provisions of this article.

a. Incinerators, unless (i) the incinerator is used exclusively as air pollution control equipment, (ii) the incinerator is an open pit incinerator subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the disposal of clean burning waste and debris waste, or (iii) the incinerator is a poultry or swine incinerator located on a farm and all of the conditions of subdivision B 15 of this section are met.

b. Ethylene oxide sterilizers.

c. Boilers, incinerators, or industrial furnaces as defined in 40 CFR 260.10 and subject to 9VAC20-60 (Hazardous Waste Regulations).

F. This subsection provides information on the extent to which any source category or portion of a source category subject to the federal hazardous air pollutant new source review program may be exempt from the provisions of this article.

1. This subdivision addresses those source categories subject to the provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08, and 40 CFR 61.15 that establish the requirements for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. Any source category

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61.

2. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.5 that establish the requirements for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D, and E. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 63.

3. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.50 through 40 CFR 63.56 that establish the requirements for issuing notices of MACT approval prior to the construction of a new emissions unit listed in the source category schedule for standards. Any information regarding exemptions for a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. This subdivision addresses those source categories for which EPA has promulgated a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act in the source category schedule for standards. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article.

**9VAC5-80-1110. Definitions.**

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined in subsection C of this section shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Addition" means the construction of a new emissions unit at or the relocation of an existing emissions unit to a stationary source.

"Affected emissions units" means the following emissions units, as applicable:

1. For a new stationary source, all emissions units.
2. For a project, the added, modified, and replacement emissions units that are part of the project.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units subject to this article, including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates:

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, 111(d), or 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.
2. Any term or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program. However, those terms or conditions designated as state-only enforceable pursuant to 9VAC5-80-1120 F or 9VAC5-80-820 G shall not be applicable federal requirements.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Any emission standard, alternative emission standard, alternative emissions limitation, equivalent emissions limitation, or other requirement established pursuant to § 112 or 129 of the federal Clean Air Act as amended in 1990.
4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
7. Any compliance monitoring requirements established pursuant to either § 504(b) or 114(a)(3) of the federal Clean Air Act.
8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.
10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.
11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a federal operating permit.
12. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.
13. Any standard or other requirement under § 126 (a)(1) and (c) of the federal Clean Air Act.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change. With respect to the initial location or relocation of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes (i) byproducts of harvesting activities conducted for forest management or commercial logging or (ii) mill residues consisting of bark, chips, edgings, sawdust, shavings, or slabs. "Clean wood" does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained, or coated.

"Commence," as applied to the construction of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun or caused to begin a continuous program of actual on-site construction of the unit, to be completed within a reasonable time; or

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting additional information.

"Construction" means fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in the uncontrolled emission rate.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include but are not limited to, lumber, wire, sheetrock, broken brick, shingles, glass, pipe, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to, stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures or their foundations, or both, and includes the same materials as construction wastes.

"Diesel engine" means, for the purposes of 9VAC5-80-1105 A 1 b, any internal combustion engine that burns diesel or #2 fuel oil to provide power to processing equipment for a vegetative waste recycling/mulching operation.

"Emergency" means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner or operator of a facility including:

1. A failure of the electrical grid;
2. On-site disaster or equipment failure;
3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions; or
4. An ISO-declared emergency, where an ISO emergency is:
  - a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property;
  - b. Capacity deficiency or capacity excess conditions;
  - c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel;
  - d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state; or
  - e. An abnormal event external to the ISO service territory that may require ISO action.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Emissions limitation" means a requirement established by the regulations of the board or by the department in a permit, order, or variance that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated air pollutant.

"Enforceable as a practical matter" means that the permit contains emissions limitations that are enforceable by ~~the board or~~ the department and meet the following criteria:

1. Are permanent;
2. Contain a legal obligation for the owner to adhere to the terms and conditions;
3. Do not allow a relaxation of a requirement of the implementation plan;
4. Are technically accurate and quantifiable;
5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and
6. Require a level of recordkeeping, reporting, and monitoring sufficient to demonstrate compliance.

"Existing stationary source" means any stationary source other than a new stationary source.

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of the construction, reconstruction, or modification of any stationary source in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61.
2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E.
3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. All terms and conditions , unless expressly designated as state-only enforceable, in a federal operating permit, including any provisions that limit a source's potential to emit.
4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, 111(d) or 129 of the federal Clean Air Act.
5. Limitations and conditions , unless expressly designated as state-only enforceable, that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.
6. Limitations and conditions , unless expressly designated as state-only enforceable, that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:
  - a. The operating permit program has been approved by EPA into the implementation plan under § 110 of the federal Clean Air Act.
  - b. The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not federally enforceable by EPA.
  - c. The operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive or make less stringent any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise federally enforceable.
  - d. The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.
  - e. The permit in question was issued only after adequate and timely notice and opportunity for comment by EPA and the public.
7. Limitations and conditions in a regulation of the board or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
8. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-1250.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Hazardous air pollutant" means (i) any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63, and (ii) incorporated by reference into the regulations of the board in subdivision 1 of 9VAC5-60-92.

"Independent system operator" or "ISO" means a person that may receive or has received by transfer pursuant to § 56-576 of the Code of Virginia any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Major modification" means any project at a major stationary source that would result in a significant emissions increase in any regulated air pollutant. For projects, the emissions increase may take into consideration any state and federally enforceable permit conditions that will be placed in a permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source" means any stationary source that emits or has the potential to emit 100 tons or more per year of any regulated air pollutant. For new stationary sources, the potential to emit may take into consideration any state and federally enforceable permit conditions that will be placed in a permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

"Minor new source review (NSR) permit" means a permit issued pursuant to this article.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in this article. The minor NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"Modification" means any physical change in, or change in the method of operation of an emissions unit that increases the uncontrolled emission rate of any regulated air pollutant emitted into the atmosphere by the unit or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted. The following shall not be considered physical changes or changes in the method of operation under this definition:

1. Maintenance, repair, and replacement of components that the ~~board~~ department determines to be routine for a source type and which does not fall within the definition of "replacement";
2. An increase in the throughput or production rate of a unit, unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter, if that increase does not exceed the operating design capacity of that unit;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. An increase in the hours of operation , unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter;
4. Use of an alternative fuel or raw material , unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter, if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the emissions unit was designed to accommodate that alternative use. A unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;
5. Use of an alternative fuel or raw material that the emissions unit is approved to use under any new source review permit;
6. The addition, replacement, or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws, permit conditions, or regulations is replaced by a system or device that the ~~board~~ department considers to be less efficient in the control of air pollution emissions;
7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not (i) necessary for the source to comply with any applicable air pollution control laws, permit conditions, or regulations or (ii) used to avoid any applicable new source review program requirement; or
8. A change in ownership at a stationary source.

"Necessary preconstruction approvals or permits" means those permits or approvals required under the NSR program that is part of the implementation plan.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in this article, Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part. The NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"New stationary source" means any stationary source to be constructed at or relocated to an undeveloped site.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function, such as garden tractors, off-highway mobile cranes and bulldozers;
2. In or on a piece of equipment that is intended to be propelled while performing its function , such as lawnmowers and string trimmers; or
3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

of transportability include but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

An internal combustion engine is not a nonroad engine if (i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act; or (ii) the engine otherwise included in subdivision 3 of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.

For purposes of this definition, a location is any single site at a building, structure, facility, or installation. Any engine or engines that replace an engine at a location and that are intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at the single location approximately three months or more each year. This subdivision does not apply to an engine after the engine is removed from the location.

"Plantwide applicability limitation" or "PAL" means an emissions limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865 or 9VAC5-80-2144.

"PAL permit" means the state operating permit issued by the ~~board~~ department that establishes a PAL for a major stationary source.

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle. Indications of portability include but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Precursor pollutant" means the following:

1. Volatile organic compounds and nitrogen oxides are precursors to ozone.
2. Sulfur dioxide is a precursor to PM<sub>2.5</sub>.
3. Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub>, unless the ~~board~~ department determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.
4. Volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub>, unless the ~~board~~ department determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

"Process operation" means any method, form, action, operation, or treatment of manufacturing or processing, including any storage or handling of materials or products before, during, or after manufacturing or processing.

"Project" means any change at an existing stationary source consisting of the addition, replacement, or modification of one or more emissions units.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information, exclusive of confidential information, for a new stationary source or project, the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the ~~board~~ department regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" means, for the sole purposes of 9VAC5-80-1210 A, B, and C, the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;
2. The replacement significantly extends the life of the emissions unit; and
3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the ~~board~~ department as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;
2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;
3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and
4. Any economic or technical limitations on compliance with applicable standards of performance that are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.
2. Any pollutant, including any associated precursor pollutant, for which an ambient air quality standard has been promulgated.
3. Any pollutant subject to any standard promulgated under 40 CFR Part 60.
4. Any pollutant subject to a standard promulgated under or other requirements established under 40 CFR Part 61 and any pollutant regulated under 40 CFR Part 63.
5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Replacement" means the substitution of an emissions unit for an emissions unit located at a stationary source, which will thereafter perform the same function as the replaced emissions unit.

"Secondary emissions" means emissions that occur or would occur as a result of the construction or operation of a new stationary source or an emissions unit, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must affect the same general areas as the stationary source that causes the secondary emissions. Secondary emissions include emissions from any off site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source or emissions unit. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Significant" means:

1. In reference to an emissions increase, an increase in potential to emit that would equal or exceed any of the following rates:

a. In ozone nonattainment areas classified as serious or severe in 9VAC5-20-204:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (PM)	25 tpy
Particulate Matter (PM <sub>10</sub> )	15 tpy
Particulate Matter (PM <sub>2.5</sub> )	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy

b. In all other areas:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (PM)	25 tpy
Particulate Matter (PM <sub>10</sub> )	15 tpy
Particulate Matter (PM <sub>2.5</sub> )	10 tpy
Volatile organic compounds	40 tpy
Lead	0.6 tpy

2. In reference to an emissions increase for a regulated air pollutant not listed in subdivision 1 of this definition, there is no emissions rate that shall be considered significant.

3. If the particulate matter (PM<sub>10</sub> or PM<sub>2.5</sub>) emissions for a stationary source or emissions unit can be determined in a manner acceptable to the ~~board~~ department and the emissions increase is determined to be significant using the emission rate for particulate matter (PM<sub>10</sub> or PM<sub>2.5</sub>), the stationary source or emissions unit shall be considered to be significant for particulate matter (PM). If the emissions of particulate matter (PM<sub>10</sub> or PM<sub>2.5</sub>) cannot be determined in a manner acceptable to the ~~board~~ department, the emission rate for particulate matter (PM) shall be used to determine whether the emissions increase is significant.

"Significant emissions increase" means, for a regulated air pollutant, an increase in emissions that is significant for that pollutant.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Site" means one or more contiguous or adjacent properties under the control of the same person or of persons under common control.

"Source category schedule for standards" means the schedule (i) issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and (ii) incorporated by reference into the regulations of the board in subdivision 2 of 9VAC5-60-92.

"Space heater" means any fixed or portable, liquid or gaseous fuel-fired, combustion unit used to heat air in a space, or used to heat air entering a space, for the purpose of maintaining an air temperature suitable for comfort, storage, or equipment operation. Space heaters do not include combustion units used primarily for the purpose of conditioning or processing raw materials or product, such as driers, kilns, or ovens.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or of persons under common control except the activities of any watercraft or any nonroad engine. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the "Standard Industrial Classification Manual" (see 9VAC5-20-21).

"Synthetic minor source" means a stationary source that otherwise has the potential to emit regulated air pollutants in amounts that are at or above those for major stationary sources, as applicable, but is subject to restrictions such that its potential to emit is less than such amounts for major stationary sources. Such restrictions must be enforceable as a practical matter. The term "synthetic minor source" applies independently for each regulated air pollutant that the source has the potential to emit.

"Temporary facility" means a facility that (i) is operated to achieve a specific objective (such as serving as a pilot test facility, a process feasibility project, or a remediation project) and (ii) does not contribute toward the commercial production of any product or service (including byproduct and intermediate product) during the operational period. Portable emissions units covered by the exemption under 9VAC5-80-1105 A 1 c and facilities used to augment or enable routine production are not considered temporary facilities for the purposes of this definition.

"Toxic pollutant" means any air pollutant (i) listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63 and (ii) incorporated by reference into the regulations of the board at subdivision 1 of 9VAC5-60-92, or any other air pollutant that the ~~board~~ department determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Uncontrolled emission rate" means the emission rate from an emissions unit when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment that is not vital to its operation, except that its use enables the owner to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the emissions unit, unless the emissions unit or stationary source is subject to state and federally enforceable permit conditions that limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted, stored, or processed may be used in determining the uncontrolled emission rate of an emissions unit or stationary source. The uncontrolled emission rate of a stationary source is the sum of the uncontrolled emission rates of the individual emissions units. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

"Undeveloped site" means any site or facility at which no emissions units are located at the time the permit application is deemed complete or at the time the owner begins actual construction, whichever occurs first. An undeveloped site also includes any site or facility at which all of the emissions units have been determined to be shut down pursuant to the provisions of 9VAC5-20-220.

"Vegetative waste" means decomposable materials generated by land clearing activities and includes shrub, bush and tree prunings, bark, brush, leaves, limbs, roots, and stumps. Vegetative waste does not include construction or demolition waste or any combination of them.

"Vegetative waste recycling/mulching operation" means any activity related to size reduction or separating, or both, of clean wood or vegetative waste, or both, by grinding, shredding, chipping, screening, or any combination of them.

**9VAC5-80-1120. General.**

A. No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the ~~board~~ department a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.

B. Except as provided in 9VAC5-80-1105 A 1 c, no owner or other person shall relocate any stationary source or emissions unit from one stationary source to another without first obtaining from the ~~board~~ department a minor NSR permit to relocate the stationary source or unit.

C. Except as provided in 9VAC5-80-1105 A 2 b, no owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any regulated air pollutant from an emissions unit without first obtaining a minor NSR permit from the ~~board~~ department.

D. The ~~board~~ department will take actions to combine permit terms and conditions as provided in 9VAC5-80-1255. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-1260 as explained in subsection E of this section.

E. The ~~board~~ department will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1260. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection D of this section.

F. All terms and conditions of any minor NSR permit shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any minor NSR permit shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources), or Article 4 (9VAC5-60-200 et seq.) or Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any minor NSR permit that is not federally enforceable shall be marked in the permit as state-only enforceable and shall be enforceable only by the ~~board~~ department. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

G. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department from granting minor NSR permits for programs of construction of a new stationary source or project in planned incremental phases. In such cases, all uncontrolled emission rate increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

**9VAC5-80-1140. Applications.**

A. A single application is required identifying at a minimum each emissions unit in the new stationary source or the project, or affected by the stack outlet elevation reduction. The application shall be submitted according to procedures acceptable to the ~~board~~ department.

B. A separate application is required for each new stationary source or project.

C. For new stationary sources or for projects with phased development, a single application should be submitted covering the entire new stationary source or project.

D. Any application, form, report, or certification submitted to the ~~board~~ department shall comply with the provisions of 9VAC5-20-230.

E. Any application submitted pursuant to this article shall contain a certification signed by the applicant as follows:

"I certify that I understand that the existence of a minor new source review permit does not shield the source from potential enforcement of any regulation of the board governing the major new source review program and does not relieve the source of the responsibility to comply with any applicable provision of the major new source review program regulations."

**9VAC5-80-1150. Application information required.**

A. The ~~board~~ department shall furnish application forms to applicants. Completion of these forms serves as initial registration of stationary sources and emissions units subject to this article.

B. Each application for a minor NSR permit shall include such information as may be required by the ~~board~~ department to determine the effect of the new stationary source or emissions unit on the ambient air quality and to determine compliance with any emission standards which are applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. A description of the source's processes and products (by Standard Industrial Classification Code).
3. All emissions of regulated air pollutants.
  - a. A minor NSR permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit or group of emissions units in the new stationary source or project or affected by the stack outlet elevation reduction. The permit application shall include a description of all changes in uncontrolled emissions from the project.
  - b. Emissions shall be calculated as required in the minor NSR permit application form or instructions or in a manner acceptable to the ~~board~~ department.
  - c. Fugitive emissions shall be included in the minor NSR permit application to the extent quantifiable.
4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.
5. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.
6. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
7. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.
8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.
9. Any additional information or documentation that the ~~board~~ department deems necessary to review and analyze the air pollution aspects of the new stationary source or the project, or the stack outlet elevation reduction, including the submission of measured air quality data at the proposed site prior to construction. Such measurements shall be accomplished using procedures acceptable to the ~~board~~ department.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the ~~board~~ department.

**9VAC5-80-1160. Action on permit application.**

A. Prior to submitting an application for processing under subsections B through F of this section, the owner may request a nonbinding applicability determination as to which particular provisions of the new source review program are applicable. The request for the applicability determination shall include sufficient information as may be necessary for the ~~board~~ department to make an applicability determination and may include the same information required for an application. Within 30 days after receipt of a request, the ~~board~~ department will (i) notify the applicant of the applicability determination or (ii) provide a determination that the information provided by the owner is insufficient to make an applicability determination, along with the identification of any deficiencies.

B. Within 30 days after receipt of an application, the ~~board~~ department will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the ~~board~~ department in writing and will include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board department will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection C of this section shall be the date on which the board department received all required information, including any applicable permit fees, and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

C. The board department will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for these steps is normally 90 days following receipt of a complete application. If a public hearing is required, processing time is normally 180 days following receipt of a complete application. The board department may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-1190 and the preliminary determination of the board department. This step may constitute the final step if the provisions of 9VAC5-80-1170 concerning public participation are not applicable.
2. When required, complete the public participation requirements in accordance with 9VAC5-80-1170.
3. Consider the public comments received in accordance with 9VAC5-80-1170.
4. Complete the final review and analysis and the final determination of the board department.

D. The board department will normally take final action on an application after completion of the applicable steps in subsection C of this section, ~~except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-1170 F, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter and, if applicable, 9VAC5-80-45.~~

E. The board department shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission standards. These emission standards are applicable during any emission testing conducted in accordance with 9VAC5-80-1200.

F. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

G. Within five days after notification to the applicant pursuant to subsection E of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9VAC5-80-1170 E 1.

H. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

**9VAC5-80-1170. Public participation.**

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1160 B, the applicant for a minor NSR permit for a new major stationary source shall notify the public of the proposed major stationary source in accordance with subsection B of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. The public notice required by subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the ~~board~~ department and shall include the following:

1. The source name, location, and type;
2. The pollutants and the total quantity of each that the applicant estimates will be emitted and a brief statement of the air quality impact of such pollutants;
3. The control technology proposed to be used at the time of the publication of the notice; and
4. The name and telephone number of a contact person employed by the applicant who can answer questions about the proposed source.

C. Upon a determination by the ~~board~~ department that an alternative plan will achieve the desired results in an equally effective manner, an applicant for a minor NSR permit may implement an alternative plan for notifying the public to that required in subsections A and B of this section.

D. Prior to the decision of the ~~board~~ department, minor NSR permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection E of this section.

1. Applications for stationary sources of hazardous air pollutants requiring a case-by-case maximum achievable control technology determination under Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).
2. Applications for new major stationary sources and major modifications.
3. Applications for projects that would result in an increase in the potential to emit of any regulated air pollutant that would equal or exceed 100 tons per year, considering any state and federally enforceable permit conditions that will be placed on the source by a minor NSR permit.
4. Applications for new stationary sources or projects that have the potential for public interest concerning air quality issues, as determined by the ~~board~~ department. The identification of such sources shall be made using the following nonexclusive criteria:
  - a. Whether the new stationary source or project is opposed by any person;
  - b. Whether the new stationary source or project has resulted in adverse media;
  - c. Whether the new stationary source or project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and
  - d. Whether the new stationary source or project has generated adverse comment by a local official, governing body, or advisory board.
5. Applications for stationary sources for which any provision of the minor NSR permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by subdivisions 1 and 2 of the GEP definition. The demonstration specified in subdivision 3 of the GEP definition and required by 9VAC5-50-20 H 3 shall be included in the application.

E. When a public comment period and public hearing are required, the ~~board~~ department shall notify the public by advertisement in at least one newspaper of general circulation in the affected air quality control region of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. For permits subject to § 10.1-1307.01 (A) of the Code of Virginia, written comments will be accepted

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

by the ~~board~~ department for at least 15 days after any hearing ~~unless the board votes to shorten the period.~~

1. Information on the minor NSR permit application , exclusive of confidential information under 9VAC5-170-60, as well as the preliminary review and analysis and preliminary determination of the ~~board~~ department shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region. Any demonstration included in an application specified in subdivision D 5 of this section shall be available for public inspection during the public comment period.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

~~F. Following the initial publication of the notice required under subsection E of this section, the board will receive written requests for direct consideration of the minor NSR permit application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:~~

~~1. The name, mailing address, and telephone number of the requester.~~

~~2. The names and addresses of all persons for whom the requester is acting as a representative; for the purposes of this requirement, an unincorporated association is a person.~~

~~3. The reason why direct consideration by the board is requested.~~

~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.~~

~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law. (Reserved.)~~

G. ~~The board~~ For permits under 9VAC5-80-1170 D 2 and I, the department will review any request made under subsection F of this section and will take final action on the request as provided in 9VAC5-80-1160 D.

H. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the ~~board~~ department shall process the minor NSR permit application using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

I. If the ~~board~~ department finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:
  - a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public how to request board consideration as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and
  - b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~
2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.
3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit unless the ~~board votes~~ director chooses to shorten the period.

**9VAC5-80-1180. Standards and conditions for granting permits.**

A. No minor NSR permit will be granted unless it is shown to the satisfaction of the ~~board~~ department that the source will comply with the following standards:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9VAC5-50 (New and Modified Stationary Sources) and with emission standards prescribed under 9VAC5-60 (Hazardous Air Pollutant Sources);
2. For sources subject to the federal hazardous air pollutant new source review program, the source shall be designed, built, and equipped to comply with the applicable emission standard and other requirements prescribed in 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), as applicable;
3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and
4. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.

B. Minor NSR permits may contain emission caps provided the caps are made enforceable as a practical matter using the elements set forth in subsection D of this section. The emission caps may be considered in determining whether a stationary source is a synthetic minor source.

C. Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include limits on the level, quantity, rate, or concentration or any combination of them for each affected pollutant.
2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.
3. The standard may prescribe, as an alternative to or a supplement to a limit prescribed under subdivision 1 of this subsection, equipment, work practice, fuels specification, process materials, maintenance, or operational standards, or any combination of them.

D. Minor NSR permits will contain, but need not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.
2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:
  - a. Limits on fuel sulfur content.
  - b. Limits on production rates with time frames as appropriate to support the emission standards.
  - c. Limits on raw material usage rate.
  - d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.
3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.
4. Specifications for air pollution control equipment installed or to be installed. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.
5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but need not be limited to, any of the following:
  - a. Pressure indicators and required pressure drop.
  - b. Temperature indicators and required temperature.
  - c. pH indicators and required pH.
  - d. Flow indicators and required flow.
6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.
7. Performance test requirements.
8. Reporting or recordkeeping requirements, or both.
9. Continuous emission or air quality monitoring requirements, or both.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

**9VAC5-80-1190. Application review and analysis.**

No minor NSR permit shall be granted unless compliance with the standards in 9VAC5-80-1180 is demonstrated to the satisfaction of the ~~board~~ department by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications for new stationary sources and projects shall be subject to the following review and analysis:
  - a. A control technology review to determine if the emissions units will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9VAC5-50 (New and Modified Stationary Sources).
  - b. An air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the ~~board~~ department.
2. Applications for stationary sources of toxic air pollutants shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9VAC5-60 (Hazardous Air Pollutant Sources).
3. Applications under 9VAC5-80-1120 C (concerning stack outlet elevation reduction) shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions as may be deemed appropriate by the ~~board~~ department.
4. Applications for sources subject to the federal hazardous air pollutant new source review program shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

**9VAC5-80-1200. Compliance determination and verification by performance testing.**

A. For stationary sources other than those specified in subsection B of this section, compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.

B. For stationary sources of toxic pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9VAC5-60-20 and shall be verified by emission tests in accordance with the provisions of 9VAC5-60-30.

C. Testing required by subsections A and B of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the ~~board~~ department shall be provided by the owner with one or, upon request, more copies of a written report of the results of the tests.

D. For sources subject to the provisions of 40 CFR Part 60, 61 or 63, the compliance determination and performance test requirements of subsections A, B and C of this section shall be met as specified in those parts of Title 40 of the Code of Federal Regulations.

E. For sources other than those specified in subsection D of this section, the requirements of subsections A, B and C of this section shall be met unless the ~~board~~ department:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the board department has determined to be adequate for indicating whether a specific source is in compliance;
4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board department reasonably expects the source to perform in compliance with applicable standards; or
5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's department's satisfaction that the source is in compliance with the applicable standard.

F. The provisions for the granting of waivers under subsection E of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the board department to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

G. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirement of the implementation plan, or any other applicable federal requirement promulgated under the federal Clean Air Act.

**9VAC5-80-1210. Permit invalidation, suspension, revocation and enforcement.**

A. In addition to the sources subject to this article, the provisions of this section shall apply to sources specified below:

1. Any stationary source (or portion of it), the construction, modification, or relocation of which commenced on or after March 17, 1972.
2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

B. A minor NSR permit shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within 18 months from the date the minor NSR permit is granted.

C. A minor NSR permit shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of the phased construction of a new stationary source or project; each phase must commence construction within 18 months of the projected and approved commencement date.

D. The board department may extend the periods prescribed in subsections B and C of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board department, such extensions may be granted using the procedures for minor amendments in 9VAC5-80-1280.

E. Any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source subject to this section who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

F. Minor NSR permits shall be subject to such terms and conditions set forth in the permit as the board department may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

G. The ~~board~~ department may revoke any minor NSR permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;
4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emissions limitations, in the implementation plan in effect at the time that an application is submitted; or
5. Fails to comply with the applicable provisions of this article.

H. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any minor NSR permit for any of the grounds for revocation contained in subsection G of this section or for any other violations of the regulations of the board.

I. The permittee shall comply with all terms and conditions of the minor NSR permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation.

J. Violation of the regulations of the board shall be grounds for revocation of minor NSR permits and are subject to the civil charges, penalties and all other relief contained in Part V (9VAC5-170-120 et seq.) of 9VAC5-170 (Regulation for General Administration) and the Virginia Air Pollution Control Law.

K. The ~~board~~ department shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a minor NSR permit, or to render a minor NSR permit invalid.

L. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department and the owner from making a mutual determination that a minor NSR permit is invalid or revoked prior to any final decision rendered under subsection K of this section.

M. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department and the owner from making a mutual determination that a minor NSR permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

N. Except with respect to minor NSR permits issued in accordance with Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), the provisions of subsections B, C, and D shall not apply to sources subject to the federal hazardous air pollutant new source review program.

**9VAC5-80-1230. Compliance with local zoning requirements.**

No provision of this part or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the ~~board~~ department of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

**9VAC5-80-1240. Transfer of permits.**

A. No person shall transfer a minor NSR permit from one location to another, or from one piece of equipment to another.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current minor NSR permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current minor NSR permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a minor NSR permit from one location to another shall not apply to the relocation of portable emissions units that are exempt from the provisions of this article by 9VAC5-80-1105 A 1 c.

E. The provisions of this section concerning the transfer of a minor NSR permit from one piece of equipment to another shall not apply to the replacement of an emissions unit that is exempt from the provisions of this article by 9VAC5-80-1105 A 2 a.

**9VAC5-80-1250. General permits.**

A. The requirements for issuance of a general permit regulation are as follows:

1. The board may issue a general permit regulation covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:

a. All stationary sources or emissions units in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.

c. Stationary sources or emissions units shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Stationary sources or emissions units operating under the authority of a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General ~~permits~~ permit regulations shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.

4. General ~~permits~~ permit regulations shall be issued in accordance with § 2.2-4006 A 8 of the Administrative Process Act.

5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit regulation;

b. The criteria to be used in determining which stationary sources or emissions units qualify for coverage under the general permit;

c. A brief description of the stationary source or emissions unit category that the department believes qualifies for coverage under the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- d. A brief description of the application process to be used by owners of stationary sources or emissions units to request coverage under the general permit regulation; and
  - e. A brief description of the public comment procedures.
- B. The requirements for application for coverage under a general permit are as follows:
1. Stationary sources or emissions units which qualify for coverage under a general permit may apply to the ~~board~~ department for coverage under the terms of the general permit regulation. Stationary sources or emissions units that do not qualify for coverage under a general permit shall apply for a minor NSR permit.
  2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.
  3. Stationary sources or emissions units that qualify for coverage under the general permit regulation after coverage is granted to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the ~~board~~ department using the application process described in the general permit. The ~~board~~ department shall grant authority to operate under the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.
- C. The requirements for granting authority to operate under a general permit are as follows:
1. The ~~board~~ department shall grant authority to operate under the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.
  2. Granting authority to operate under a general permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-1170.
  3. A response to each general permit regulation application may be provided at the discretion of the ~~board~~ department. The general permit may specify a reasonable time period after which the owner of a stationary source or emissions unit that has submitted an application shall be deemed to be authorized to operate under the general permit.
  4. Stationary sources or emissions units authorized to operate under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is authorized to operate under the general permit.
  5. The general permit regulation shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.
- D. The stationary source or emissions unit shall be subject to enforcement action under 9VAC5-80-1210 for operation without a minor NSR permit if the stationary source or emissions unit is later determined by the ~~board~~ department not to qualify for the conditions and terms of the general permit.

**9VAC5-80-1255. Actions to combine permit terms and conditions.**

- A. General requirements for actions to combine permit terms and conditions are as follows:
1. Except as provided in subdivision 3 of this subsection, the ~~board~~ department may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the ~~board~~ department.

3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

B. The ~~board~~ department may take actions to combine the terms and conditions of state operating permits and new source review permits, along with any changes to state operating permits and new source review permits.

C. If the ~~board~~ department and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the ~~board~~ department may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the ~~board~~ department may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.
4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:
  - a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.
  - b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.
  - c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

**9VAC5-80-1260. Actions to change permits.**

A. The general requirements for actions to make changes to minor NSR permits are as follows:

1. Except as provided in subdivision 3 of this subsection, changes to a minor NSR permit shall be made as specified under subsections B and C of this section and 9VAC5-80-1270 through 9VAC5-80-1300.
2. Changes to a minor NSR permit may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department as specified in subsection C of this section.
3. Changes to a minor NSR permit and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.
4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a minor NSR permit by submitting a written request to the ~~board~~ department for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit changes can be found in 9VAC5-80-1270 through 9VAC5-80-1290.
2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The ~~board~~ department may initiate a change to a minor NSR permit through the use of permit reopenings as specified in 9VAC5-80-1300.

**9VAC5-80-1270. Administrative permit amendments.**

A. Administrative permit amendments shall be used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.
3. Change in ownership or operational control of a source where the board department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board department and the requirements of 9VAC5-80-1240 have been fulfilled.

B. The administrative permit amendment procedures are as follows:

1. The board department will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.
2. The board department will incorporate the changes without providing notice to the public under 9VAC5-80-1170 and designate in the permit amendment that such permit revisions have been made pursuant to this section.
3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**9VAC5-80-1280. Minor permit amendments.**

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement.
2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.
3. Do not require or change a case-by-case determination of an emissions limitation or other requirement.
4. Except as provided in subdivision C 2 of this section, do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:
  - a. An emissions cap assumed to avoid classification as a project subject to the new source review program or as a modification under § 112 of the federal Clean Air Act; and
  - b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.
5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act that would otherwise require a permit under the new source review program.
6. Are not required to be processed as a significant amendment under 9VAC5-80-1290 or as an administrative permit amendment under 9VAC5-80-1270.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Require new or more frequent monitoring or reporting by the permittee or a reduction in the level of an emissions cap.
3. Designate any minor NSR permit term or condition that meets the criteria in 9VAC5-80-1120 F 1 as state-only enforceable as provided in 9VAC5-80-1120 F 2 for any minor NSR permit or any repealed or amended regulation from which this article is derived.
4. Apply any minor NSR permit term or condition that is applicable to an existing emissions unit to its replacement emissions unit that otherwise meets the requirements for exemption from the minor new source review permit program requirements under the provisions of 9VAC5-80-1105 A 2 a.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a minor NSR permit if the ~~board~~ department and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

1. In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated air pollutant.
2. Any emissions cap contained in the permit shall be adjusted downward appropriately so that the emissions unit's potential to emit does not reflect any compound no longer considered a regulated air pollutant.

D. A request for the use of minor permit amendment procedures shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs, accompanied by a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-1170 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department will do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.
3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.
2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed amendment.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify if the applicant has submitted a suggested proposed permit amendment pursuant to subsection D of this section. However, if the owner fails to comply with the proposed permit terms and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

**9VAC5-80-1290. Significant amendment procedures.**

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1280 or as administrative amendments under 9VAC5-80-1270.

2. Significant amendment procedures shall be used for those permit amendments that meet any one of the following criteria:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emissions limitation or other requirement.

c. Seek to establish or change a minor NSR permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a project subject to the new source review program or as a modification under § 112 of the federal Clean Air Act; and

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

3. Significant amendment procedures may not be used to bypass the public participation requirements in 9VAC5-80-1170 for an application for a project that would be subject to the minor new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. At the discretion of the ~~board~~ department, the provisions of 9VAC5-80-1170 D and E shall apply to requests made under this section if the emissions unit subject to the request under this section was subject to review in any previous permit application that was subject to 9VAC5-80-1170.

D. The ~~board~~ department will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public hearing is required, processing time for a permit amendment is normally 180 days following receipt of a complete request except in cases where ~~direct consideration of the request by the board is granted pursuant to 9VAC5-80-25~~ the permit must be processed according to 9VAC5-80-45. The ~~board~~ department may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the ~~board~~ department under subsection D of this section.

**9VAC5-80-1300. Reopening for cause.**

A. A minor NSR permit may be reopened and revised under any of the following situations:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.
2. The ~~board~~ department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit.
3. The ~~board~~ department determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the requirements contained in this article.
4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a minor NSR permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

**9VAC5-80-1410. Definitions.**

A. For the purpose of this article and subsequent amendments or any orders issued by the ~~board~~ department, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this section, all terms not defined in subsection C of this section shall have the meaning given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Affected source" means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a MACT standard.

"Affected states" are all states:

1. Whose air quality may be affected and that are contiguous to the Commonwealth; or
2. Whose air quality may be affected and that are within 50 miles of the major source for which a case-by-case MACT determination is made in accordance with this article.

"Available information" means, for purposes of identifying control technology options for the stationary source, information contained in the following information sources as of the date of approval of the permit:

1. A relevant proposed regulation, including all supporting information.
2. Background information documents for a draft or proposed regulation.
3. Data and information available from the Control Technology Center developed pursuant to § 113 of the federal Clean Air Act.
4. Data and information contained in the Aerometric Informational Retrieval System including information in the MACT database.
5. Any additional information that can be expeditiously provided by the administrator.
6. For the purpose of determinations by the ~~board~~ department, any additional information provided by the applicant or others, and any additional information considered available by the ~~board~~ department.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Begin actual reconstruction" means initiation of permanent physical on-site reconstruction of an emissions unit. This includes installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Best controlled similar source" means a stationary source that (i) has comparable emissions and is structurally similar in design and capacity to other stationary sources such that the stationary sources could be controlled using the same control technology and (ii) uses a control technology that achieves the lowest emission rate among all other similar sources in the United States.

"Case-by-case MACT determination" means a determination by the ~~board~~ department, pursuant to the requirements of this article, that establishes a MACT emission limitation, MACT work practice standard, or other MACT requirements for a stationary source subject to this article.

"Commenced" means, with respect to construction or reconstruction of a stationary source, that the owner has undertaken a continuous program of construction or reconstruction or that an owner has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting additional information.

"Construct a major source" means:

1. To fabricate, erect, or install a major source at any undeveloped site; or
2. To fabricate, erect, or install a major process or production unit at any site.

"Construction" means:

1. The fabrication, erection, or installation of a major source at any undeveloped site; or
2. The fabrication, erection, or installation of a major process or production unit at any site.

"Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including but not limited to, measures that:

1. Reduce the quantity of or eliminate emissions of such pollutants through process changes, substitution of materials, or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;
4. Are design, equipment, work practice, or operational standards, including requirements for operator training or certification; or
5. Are a combination of subdivisions 1 through 4 of this definition.

"Electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

"Emergency" means, in the context of 9VAC5-80-1580 C, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

the requirements of this article, such as sudden loss of power, fires, earthquakes, floods, or similar occurrences.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any hazardous air pollutant.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the ~~board~~ or the department and meet the following criteria:

1. Are permanent.
2. Contain a legal obligation for the owner to adhere to the terms and conditions.
3. Do not allow a relaxation of a requirement of the state implementation plan.
4. Are technically accurate and quantifiable.
5. Include averaging times or other provisions that allow at least monthly , or a shorter period if necessary to be consistent with the emission standard, checks on compliance. This may include but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9VAC5-80-1490 and other regulations of the board.
6. Require a level of recordkeeping, reporting, and monitoring sufficient to demonstrate compliance.

"EPA" means the U.S. Environmental Protection Agency.

"Federal operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.
4. Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP).
5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51. This does not include limitations and conditions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.
6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability. This does not include limitations and conditions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

7. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that EPA has legal authority to create.

"Fixed capital cost" means the capital needed to provide all the depreciable components of an existing source.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act as amended by ~~40 CFR 63.60~~ subpart C of 40 CFR Part 63.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"MACT standard" means (i) an emission standard; (ii) an alternative emission standard; or (iii) an alternative emission limitation promulgated in 40 CFR Part 63 that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation. A MACT standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique, including prohibition of emissions, that the administrator establishes for new or existing sources to which such standard or limitation applies. Every MACT standard established pursuant to § 112 of the federal Clean Air Act includes subpart A of 40 CFR Part 63 and all applicable appendices of 40 CFR Part 63 or of other parts of Title 40 of the Code of Federal Regulations that are referenced in that standard.

"Major process or production unit" means any process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

"Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the ~~board~~ department establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this definition.

"Maximum achievable control technology (MACT) emission limitation" means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source and that reflects the maximum degree of reduction in emissions that the ~~board~~ department, taking into consideration the cost of achieving such emission reduction and any nonair quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Permit" means a document issued pursuant to this article containing all federally enforceable conditions necessary to enforce the application and operation of any maximum achievable control technology or other control technologies such that the MACT emission limitation is met.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

"Presumptive MACT" means a preliminary MACT determination made by EPA, in consultation with states and other stakeholders, after data on a source category's emissions and controls have been collected and analyzed, but before the MACT standard has been promulgated.

"Process or production unit" means any collection of structures or equipment or both, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information—, exclusive of confidential information, the preliminary review and analysis, and the preliminary decision of the ~~board~~ department regarding the permit application.

"Reconstruct a major source" means to replace components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new process or production unit; and
2. It is technically and economically feasible for the reconstructed major source to meet the applicable standard for new sources established in a permit.

"Reconstruction" means the replacement of components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new process or production unit; and
2. It is technologically and economically feasible for the reconstructed process or production unit to meet the applicable standard for new sources established in a permit.

"Research and development activities" means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner.

"Similar source" means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

"Source category list" means the list and schedule issued pursuant to § 112(c) and (e) for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 63 FR 7155, February 12, 1998.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollution control equipment is equipment that enables the source to conform to applicable air pollution control laws and regulations and that is not vital to its operation.

**9VAC5-80-1420. General.**

A. No owner or other person shall begin actual construction or reconstruction of any major source of hazardous air pollutants without first obtaining from the ~~board~~ department a permit to construct and operate or to reconstruct and operate such source.

B. The ~~board~~ department may combine the requirements of and the permits for emissions units within a stationary source subject to the new source review program into one permit. Likewise the ~~board~~ department may require that applications for permits for emissions units within a stationary source required by any provision of the new source review program be combined into one application.

C. All provisions contained in the permit shall be federally enforceable upon the effective date of issuance of the permit, except for those provisions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

D. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department from granting permits for programs of construction or reconstruction in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

E. The MACT emission limitations and requirements established according to this article shall be effective as required by 9VAC5-80-1450 I, consistent with the principles established in subsection F of this section, and supported by the information listed in 9VAC5-80-1440. The owner shall comply with the requirements in 9VAC5-80-1450 J and 9VAC5-80-1490, and with all applicable requirements in Subpart A of 40 CFR Part 63.

F. The following general principles shall govern preparation by the owner of each permit application or other application for stationary sources requiring a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the ~~board~~ department:

1. The MACT emission limitation or MACT requirements recommended by the applicant and approved by the ~~board~~ department shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the ~~board~~ department.
2. Based upon available information, the MACT emission limitation and control technology (including any requirements under subdivision 3 of this subsection) recommended by the applicant and approved by the ~~board~~ department shall achieve the maximum degree of reduction in emissions of hazardous air pollutants which can be achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements associated with the emission reduction.
3. The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof, and the ~~board~~ department may approve such a standard if the ~~board~~ department specifically determines that it is not feasible to prescribe or enforce an emission limitation. The phrase "not feasible" means any situation in which the ~~board~~ department determines that:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. A hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with the Regulations for the Control and Abatement of Air Pollution.
  - b. The application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.
4. If the administrator has either proposed a MACT emission standard or made a presumptive MACT determination for the source category which includes the constructed or reconstructed major source, the ~~board~~ department shall consider the MACT emission limitations and requirements of the proposed standard or presumptive MACT determination in determining the MACT emission limitation applicable to the constructed or reconstructed major source.
- G. The provisions of subsection F of this section shall not apply to new, major process or production units, provided the process or production unit satisfies the criteria in subdivisions 1 through 6 of this subsection:
1. All hazardous air pollutants emitted by the process or production unit that would otherwise be controlled under the requirements of this article will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;
  2. a. The ~~board~~ department has determined within a period of five years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT) or lowest achievable emission rate (LAER), determined in accordance with 9VAC5-50-280 (BACT) or 9VAC5-50-270 (LAER), for the category of pollutants which includes those hazardous air pollutants to be emitted by the process or production unit; or  
b. The ~~board~~ department determines that the control of hazardous air pollutant emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);
  3. The ~~board~~ department determines that the percent control efficiency for emissions of hazardous air pollutants from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;
  4. The ~~board~~ department has provided notice and an opportunity for public comment concerning its determination that criteria in subdivisions 1 through 3 of this subsection apply and concerning the continued adequacy of any prior BACT or LAER determination;
  5. If any commenter has asserted that a prior BACT or LAER determination is no longer adequate, the ~~board~~ department has determined that the level of control required by that prior determination remains adequate; and
  6. Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the ~~board~~ department are predicated will be construed by the ~~board~~ department as applicable requirements under the federal operating permit program and either have been incorporated into any existing federal operating permit for the stationary source or will be incorporated into such permit upon issuance.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-1430. Applications.**

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures approved by the ~~board~~ department. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted.

B. A separate application is required for each major source.

C. For projects with phased development, a single application should be submitted covering the entire project.

D. Any application form, report, or compliance certification submitted to the ~~board~~ department shall comply with the provisions of 9VAC5-20-230.

**9VAC5-80-1440. Application information required.**

A. The ~~board~~ department shall furnish application forms to applicants. Completion of these forms serves as initial registration of new and reconstructed sources.

B. Each application for a permit shall include such information as may be required by the ~~board~~ department to determine compliance with the MACT emission limitation established under this article. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.
2. A brief description of the major source, including a description of the source's processes and products (by Standard Industrial Classification Code), to be constructed or reconstructed and identification of any listed source category or categories in which it is included.
3. All emissions of hazardous air pollutants.
  - a. A permit application shall describe all emissions of hazardous air pollutants emitted from any emissions unit to be covered by the permit.
  - b. Emissions shall be calculated as required in the permit application form or instructions.
  - c. Fugitive emissions shall be included in the permit application to the extent quantifiable.
4. The hazardous air pollutants emitted by the constructed or reconstructed major source and the estimated emission rate for each such hazardous air pollutant. Emissions rates shall be expressed in tons per year and in such other terms as are necessary to establish compliance consistent with the applicable standard reference test method.
5. The maximum and expected utilization of capacity of the constructed or reconstructed major source and the associated uncontrolled emission rates for that source.
6. The controlled emissions for the constructed or reconstructed major source in tons per year at expected and maximum utilization of capacity.
7. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.
8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all hazardous air pollutants at the source.
9. Calculations on which the information in subdivisions 3 through 8 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

10. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source.
11. The expected commencement date for the construction or reconstruction of the major source.
12. The expected completion date for construction or reconstruction of the major source.
13. The anticipated date of startup for the constructed or reconstructed major source.
14. Any additional information or documentation that the ~~board~~ department deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit.

C. In each instance where a stationary source would require additional control technology or a change in control technology to be in compliance with the MACT emission limitation established under this article, the application shall contain the following information:

1. Information described in subsection B of this section.
2. The control technology selected by the owner and compliance monitoring devices or activities that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in 9VAC5-80-1420 F.
3. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 9VAC5-80-1420 F.
4. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the ~~board~~department).
5. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health and environmental impacts or energy requirements for the selected control technology.
6. Any other relevant information required pursuant to Subpart A of 40 CFR Part 63.

D. In each instance where the owner contends that a stationary source will be in compliance, upon startup, with the MACT emission limitation established under this article without a change in control technology, the application shall contain:

1. Information described in subsections B and C of this section; and
2. Documentation of the control technology in place.

E. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the ~~board~~ department.

**9VAC5-80-1450. Action on permit application.**

A. Within 45 days after receipt of an application, the ~~board~~ department shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the ~~board~~ department in writing and shall include: (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the ~~board~~ department shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the ~~board~~ department

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met.

B. The ~~board~~ department will normally process an application according to the steps specified in subdivisions 1 through 5 of this subsection. Processing time for these steps is normally 180 days following receipt of a complete application. The ~~board~~ department may extend this time period if additional information is needed.

1. Complete the application review and analysis in accordance with 9VAC5-80-1480 and the preliminary decision of the ~~board~~ department;
2. Complete the emission limitation review (if any);
3. Complete the public participation requirements in 9VAC5-80-1460;
4. Consider the public comments received in accordance with 9VAC5-80-1460; and
5. Completion of the final review and analysis and the final determination of the ~~board~~ department.

C. At its discretion, the ~~board~~ department may undertake the following steps prior to commencing with the public participation requirements of 9VAC5-80-1460:

1. The ~~board~~ department shall initially approve the recommended emission limitation and other terms set forth in the application, or the ~~board~~ department shall notify the owner in writing of its intent to disapprove the application, within 30 calendar days after the owner is notified in writing that the application is complete.
2. The owner may present, in writing, within 60 calendar days after receipt of notice of the ~~board's~~ department's intent to disapprove the application, additional information or arguments pertaining to, or amendments to, the application for consideration by the ~~board~~ department before it decides whether to finally disapprove the application.
3. The ~~board~~ department shall either initially approve or issue a final disapproval of the application within 90 days after it notifies the owner of an intent to disapprove or within 30 days after the date additional information is received from the owner, whichever is earlier.

D. The ~~board~~ department will normally take final action on an application after completion of the steps in subsections B and C of this section, ~~except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-1460 G, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter and, if applicable, 9VAC5-80-45.~~

E. The ~~board~~ department shall notify the applicant in writing of its final decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9VAC5-80-1490.

F. A final decision by the ~~board~~ department to disapprove any application shall be in writing and shall specify the grounds on which the disapproval is based. If any application is finally disapproved, the owner may submit a subsequent application concerning construction or reconstruction of the same major source, provided that the subsequent application has been amended in response to the stated grounds for the prior disapproval.

G. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

H. Within five days after notification to the applicant pursuant to subsection B of this section, the notification and any comments received pursuant to the public comment period and public

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

hearing shall be made available for public inspection at the same location as was the information in 9VAC5-80-1460 H 1.

I. The ~~board~~ department shall send a copy of any final permit issued to a stationary source to the administrator through the appropriate regional office and to all other state and local air pollution control agencies having jurisdiction in affected states. Within 60 days of the issuance of the final permit, the ~~board~~ department shall provide a copy of such permit to the administrator, and shall provide a summary in a compatible electronic format for inclusion in the MACT database.

J. The effective date of a case-by-case MACT determination shall be the date the permit becomes final.

K. On and after the date of startup, a constructed or reconstructed major source which is subject to the requirements of this article shall be in compliance with all applicable requirements specified in the permit.

L. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

**9VAC5-80-1460. Public participation.**

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1450 A, the applicant for a permit for a major source of hazardous air pollutants shall notify the public of the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the ~~board~~ department and shall include the following:

1. The source name, location, and type;
2. The applicable pollutants and the total quantity of each that the applicant estimates will be emitted and a brief statement of the air quality impact of such pollutants;
3. The control technology proposed to be used at the time of the publication of the notice;
4. The date, time, and place of the informational briefing; and
5. The name and telephone number of a contact person employed by the applicant who can answer questions about the proposed source.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. 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 and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the ~~board~~ department shall attend and provide information and answer questions on the permit application review process.

D. Upon a determination by the ~~board~~ department that an alternative plan will achieve the desired results in an equally effective manner, an applicant for a permit may implement an

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the ~~board~~ department, all permit applications shall be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period a public hearing will be held with notice in accordance with subsection F of this section.

F. The ~~board~~ department shall notify the public by advertisement in at least one newspaper of general circulation in the area affected of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the ~~board~~ department for at least 15 days after any hearing ~~unless the board votes to shorten the period.~~

1. Information on the permit application, exclusive of confidential information under 9VAC5-170-60, as well as the preliminary review and analysis and preliminary determination of the ~~board~~ department shall be available for public inspection during the entire public comment period in at least one location in the affected area.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator.

3. Notices of public hearings published under this section shall meet the requirements of § 10.1-1307.01 (A) of the Virginia Air Pollution Control Law.

~~G. Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:~~

~~1. The name, mailing address, and telephone number of the requester.~~

~~2. The names and addresses of all persons for whom the requester is acting as a representative ; for the purposes of this requirement, an unincorporated association is a person.~~

~~3. The reason why direct consideration by the board is requested.~~

~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.~~

~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law. (Reserved.)~~

~~H. The ~~board~~ department will review any request made under subsection G of this section and will take final action on the request application as provided in 9VAC5-80-1450 D.~~

I. In order to facilitate the efficient issuance of permits under Articles 1 and 3 of this chapter, upon request of the applicant the ~~board~~ department shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

J. If appropriate, the ~~board~~ department may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the ~~board~~ department provides a public briefing, the requirements of subsection F of this section concerning public notification will be followed.

K. If the ~~board~~ department finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:
  - a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request board consideration as to the date and location of a public hearing;~~ and (v) advise the public where to obtain information regarding the proposed action. ~~The department shall post such notice on the department website and on a department social media account;~~ and
  - b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~
2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.
3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit unless the ~~board votes~~ director chooses to shorten the period.

**9VAC5-80-1470. Standards and conditions for granting permits.**

A. No permit shall be granted pursuant to this article unless it is shown to the satisfaction of the ~~board~~ department that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of the regulations of the board and that the following standards have been met:

1. The source shall be designed, built and equipped to comply with applicable emission standards and other requirements prescribed under 9VAC5 Chapter 60 (9VAC5-60-10 et seq.).
2. The source shall be designed, built and equipped to comply with the MACT emission limitation and other requirements prescribed in the permit.
3. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board.

B. Permits granted pursuant to this article shall:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. Contain a MACT emission limitation (or a MACT work practice standard if the board department determines it is not feasible to prescribe or enforce an emission limitation) to control the emissions of hazardous air pollutants which is determined by the board department and conforms to the principles set forth in 9VAC5-80-1420 F.
2. Specify any notification, operation and maintenance, performance testing, monitoring, reporting and recordkeeping requirements.
3. Include the following:
  - a. In addition to the MACT emission limitation or MACT work practice standard established under this article, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation.
  - b. Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with the requirements of 9VAC5-80-110 K.
  - c. Monitoring capable of demonstrating continuous compliance during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for enforcing all applicable requirements established under this article, including emission limitations.
  - d. A statement requiring the owner to comply with all applicable requirements contained in this article.

C. Permits granted pursuant to this article shall contain emission standards as necessary to implement the provisions of this article. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emission levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.
2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.
3. Standards shall only include limitations that are determined by the board department to be achievable through application of production processes or available methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, or substitution of less toxic or nontoxic materials.
4. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

D. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.
2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:
  - a. Limit on production rates with time frames as appropriate to support the emission standards.
  - b. Limit on raw material usage rate.
  - c. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.
4. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.
5. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:
  - a. Pressure indicators and required pressure drop.
  - b. Temperature indicators and required temperature.
  - c. pH indicators and required pH.
  - d. Flow indicators and required flow.
6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.
7. Stack test requirements.
8. Reporting or recordkeeping requirements, or both.
9. Continuous emission or air quality monitoring requirements, or both.
10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

**9VAC5-80-1480. Application review and analysis.**

A. No permit shall be granted pursuant to this article unless compliance with the standards in 9VAC5-80-1470 is demonstrated to the satisfaction of the ~~board~~ department by a review and analysis of the application performed on a source-by-source basis.

B. Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9VAC5-80-1470.

**9VAC5-80-1490. Compliance determination and verification by performance testing.**

A. An owner of a constructed or reconstructed major source shall comply with all requirements in the final permit issued pursuant to this article, including but not limited to any emission limitation or work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements.

B. An owner of a constructed or reconstructed major source which has obtained a permit shall be deemed to be in compliance with the Virginia Air Pollution Control Law only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the permit issued pursuant to this article. Any violation of such requirements by the owner or any other person shall be deemed by the ~~board~~ department to be a violation of the prohibition on construction or reconstruction in this article for whatever period the owner is determined to be in violation of such requirements, and shall subject the owner to appropriate enforcement action under the Virginia Air Pollution Control Law.

C. Compliance with emission standards shall be determined in accordance with the provisions of 9VAC5-60-20 and shall be verified by emission tests in accordance with the provisions of 9VAC5-60-30.

D. Testing required by this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the new or reconstructed source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

~~board~~ department shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

E. The requirements of subsections C and D of this section shall be met unless the ~~board~~ department:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the ~~board~~ department has determined to be adequate for indicating whether a specific source is in compliance;
4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the ~~board~~ department reasonably expects the new or reconstructed source to perform in compliance with applicable standards; or
5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the ~~board's~~ department's satisfaction that the source is in compliance with the applicable standard.

F. The provisions for the granting of waivers under subsection E of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the ~~board~~ department to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

**9VAC5-80-1500. Permit invalidation, rescission, revocation and enforcement.**

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction or reconstruction is not commenced within the latest of the following time frames:

1. Eighteen months from the date the permit is granted;
2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any governmental entity; or
3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).

B. A permit granted pursuant to this article shall become invalid if a program of construction or reconstruction is discontinued for a period of 18 months or more, or if a program of construction or reconstruction is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

C. The ~~board~~ department may extend the periods prescribed in subsections A and B of this section, by no more than 12 months, upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the ~~board~~ department, such extensions may be granted without being subject to the requirements of 9VAC5-80-1460.

D. Any owner who constructs or operates a new or reconstructed source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or reconstructed source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board department may deem necessary to ensure compliance with all applicable requirements of the regulations.

F. The board department may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit; or
4. Fails to comply with the applicable provisions of this article.

G. The board department may suspend, under such conditions and for such period of time as the board department may prescribe, any permit for any of the grounds for revocation contained in subsection F of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. A permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and may be grounds for (i) enforcement action or (ii) termination or revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part V (9VAC5-170-120 et seq.) of 9VAC5 Chapter 170 and the Virginia Air Pollution Control Law.

J. The board department shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

K. Nothing in the regulations of the board shall be construed to prevent the board department and the owner from making a mutual determination that a permit is invalid or revoked prior to any final decision rendered under subsection J of this section.

L. Nothing in the regulations of the board shall be construed to prevent the board department and the owner from making a mutual determination that a permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

**9VAC5-80-1530. Transfer of permits.**

A. No persons shall transfer a permit from one location to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board department of the change in source name within 30 days of the name change.

**9VAC5-80-1540. Changes to permits.**

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-1550 through 9VAC5-80-1580 of this article.
2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board department as specified in subsection C of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) of this part shall be made as specified in Article 1 of this part.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board department for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9VAC5-80-1550 through 9VAC5-80-1570.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-1580.

**9VAC5-80-1550. Administrative permit amendments.**

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board department and the requirements of 9VAC5-80-1420 have been fulfilled.

4. The combining of permits under the new source review program as provided in 9VAC5-80-1420 B.

B. The administrative permit amendment procedures are as follows:

1. The board department will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board department shall incorporate the changes without providing notice to the public under 9VAC5-80-1460. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**9VAC5-80-1560. Minor permit amendments.**

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard;

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

- a. An emissions cap assumed to avoid classification as a modification subject to the new source review program or § 112 of the federal Clean Air Act; and
  - b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;
5. Are not a result of modifications subject to the new source review program; and
  6. Are not required to be processed as a significant amendment under 9VAC5-80-1570; or as an administrative permit amendment under 9VAC5-80-1550.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally approved program. Minor permit amendment procedures may also be used to require more frequent monitoring or reporting by the permittee.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the ~~board~~ department and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.
2. A request that such procedures be used.

E. The public participation requirements of 9VAC5-80-1460 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department shall do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.
3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follow:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.
2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions that the owner seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions that the owner seeks to modify may be enforced against the owner.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-1570. Significant amendment procedures.**

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1560 or as administrative amendments under 9VAC5-80-1550.
2. Significant amendment procedures shall be used for those permit amendments that:
  - a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.
  - b. Require or change a case-by-case determination of an emission limitation or other standard.
  - c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:
    - (1) An emissions cap assumed to avoid classification as a modification subject to the new source review program or § 112 of the federal Clean Air Act.
    - (2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.
  - d. Result from modifications subject to the new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. The provisions of 9VAC5-80-1460 shall apply to requests made under this section.

D. The ~~board~~ department will normally take final action on significant permit amendments within 90 days after receipt of a complete request.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the ~~board~~ department under subsection D of this section.

**9VAC5-80-1580. Reopening for cause.**

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emission units covered by the permit after a permit is issued but prior to commencement of construction.
2. The ~~board~~ department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
3. The ~~board~~ department determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.
4. A new emission standard prescribed under Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5 Chapter 60 becomes applicable after a permit is issued but prior to initial startup.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

**9VAC5-80-1590. Requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirements.**

A. If the administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which would be deemed to be a constructed or reconstructed major source under this article before the date the owner has obtained a final and legally effective permit pursuant to this article, the owner shall comply with the promulgated standard by the compliance date in the promulgated standard.

B. If the administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which was deemed to be a constructed or reconstructed major source under this article and has been subject to a prior case-by-case MACT determination pursuant to this article, and the owner obtained a final and legally effective case-by-case MACT determination prior to the promulgation date of the MACT standard, the ~~board~~ department shall (if the initial federal operating permit has not yet been issued) amend the permit issued pursuant to this article in accordance with the reopening procedures of 9VAC5-80-1580 to incorporate the emission standard, or shall (if the initial federal operating permit has been issued) revise the federal operating permit according to the reopening procedures in 9VAC5-80-240 to incorporate the MACT standard.

1. The MACT standard established pursuant to § 112(d) or § 112(h) of the federal Clean Air Act may specify a compliance date for those sources which have obtained a final and legally effective case-by-case MACT determination under this article. In that event, the ~~board~~ department shall reopen the source's federal operating permit in accordance with the procedures in 9VAC5-80-240 to incorporate the applicable compliance date.

2. If no compliance date is specified in the MACT standard established pursuant to § 112(d) or § 112(h) of the federal Clean Air Act for those sources which have obtained a final and legally effective case-by-case MACT determination under this article, the ~~board~~ department shall establish a compliance date that assures the owner will comply with a promulgated MACT standard as expeditiously as practicable, but no longer than eight years after the standard is promulgated, and shall reopen the source's federal operating permit in accordance with procedures in 9VAC5-80-240 to incorporate that compliance date.

C. Notwithstanding the requirements of subsections A and B of this section, if the administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which was deemed to be a constructed or reconstructed major source under this article and which is the subject of a prior case-by-case MACT determination pursuant to this article, and the level of control required by the MACT standard issued under § 112(d) or § 112(h) is less stringent than the level of control required by any emission limitation or standard in the prior case-by-case MACT determination, the ~~board~~ department is not required to incorporate any less stringent terms of the promulgated standard in the source's federal operating permit and may, in its discretion, consider

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

any more stringent provisions of the prior case-by-case MACT determination to be applicable legal requirements when issuing or revising the federal operating permit.

**9VAC5-80-1605. Applicability.**

Article 8

Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas

A. The provisions of this article apply to the construction of any new major stationary source or any project at an existing major stationary source.

B. The provisions of this article apply in prevention of significant deterioration areas designated in 9VAC5-20-205.

C. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not yet commenced on the source or modification.

D. Unless specified otherwise, the provisions of this article apply as follows:

1. Provisions referring to "sources," "new or modified sources" or "stationary sources" apply to the construction of all major stationary sources and major modifications.
2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), or Article 9 (9VAC5-80-2000 et seq.) of this part.
3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9VAC5-80-1625 G.

E. Unless otherwise approved by the ~~board~~ department or prescribed in these regulations, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-1775 A prior to September 1, 2006. Any permit applications that have not been determined to be complete as of September 1, 2006, shall be subject to the new provisions.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

G. The requirements of this article will be applied in accordance with the following principles:

1. Except as otherwise provided in subsection H of this subsection, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 and 4 of this subsection. The procedure for calculating (before beginning actual construction) whether

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, is significant for that pollutant.

4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project is significant for that pollutant.

5. The hybrid test for projects that involve multiple types of emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 and 4 of this subdivision as applicable with respect to each emissions unit, for each type of emissions unit is significant for that pollutant. For example, if a project involves both an existing emissions unit and a new unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 4 of this subsection for the new unit.

H. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9VAC5-80-1865.

I. The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50 and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5 Chapter 60.

J. The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

**9VAC5-80-1615. Definitions.**

A. As used in this article, all words or terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-50-280, and applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section:

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a, b, and c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-1865. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

operation. The ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The ~~board~~ department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

- a. The applicable standards as set forth in 40 CFR Parts 60, 61, and 63;
- b. The applicable implementation plan emissions limitation including those with a future compliance date; or
- c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

- a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.
- b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.
- c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or 129 of the federal Clean Air Act as amended in 1990.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
- f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
- g. Any compliance monitoring requirements established pursuant to either § 504(b) or 114(a)(3) of the federal Clean Air Act.
- h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
- i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.
- j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.
- k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a permit issued under this article.
- l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in this article.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

- a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal source operation.
  - (1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
  - (2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
  - (3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.
  - (4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.
- b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the 10-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the ~~board~~ department for a permit required under this article, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the ~~board~~ department has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this subsection.

"Baseline area":

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: (i) for SO<sub>2</sub>, NO<sub>2</sub>, or PM<sub>10</sub>, equal to or greater than 1 µg/m<sup>3</sup> (annual average); or (ii) for PM<sub>2.5</sub>, equal to or greater than 0.3 µg/m<sup>3</sup> (annual average).

b. Area redesignations under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- (1) Establishes a minor source baseline date; or
- (2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that such baseline area shall not remain in effect if the ~~board~~ department rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

"Baseline concentration"

a. Means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

- (1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition; and
- (2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

- (1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and
- (2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

- (1) In the case of PM<sub>10</sub> and sulfur dioxide, January 6, 1975;
- (2) In the case of nitrogen dioxide, February 8, 1988; and
- (3) In the case of PM<sub>2.5</sub>, October 20, 2010.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

- (1) In the case of PM<sub>10</sub> and sulfur dioxide, August 7, 1977;
- (2) In the case of nitrogen dioxide, February 8, 1988; and
- (3) In the case of PM<sub>2.5</sub>, October 20, 2011.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

- (1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and
- (2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the ~~board~~ department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the ~~board~~ department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" or "BACT" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the ~~board~~ department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the ~~board~~ department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., that have the same first two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for the purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this definition, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit is an existing emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the ~~board or the~~ department and meet the following criteria:

- a. Are permanent;
- b. Contain a legal obligation for the owner to adhere to the terms and conditions;
- c. Do not allow a relaxation of a requirement of the implementation plan;
- d. Are technically accurate and quantifiable;
- e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits on a

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, 111(d) or 129 of the federal Clean Air Act.

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review permit issued under regulations approved by the EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act;

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable";

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

g. Limitations and conditions in a regulation of the board or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that the EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Lowest achievable emission rate" or "LAER" is as defined in 9VAC5-80-2010 C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant for nonattainment areas in an amount that is equal to or greater than the major source threshold for the PAL pollutant in subdivision a (1) of the definition of "major stationary source" in 9VAC5-80-2010 C.

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO<sub>x</sub> shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and

(b) of the Energy Supply and Environmental Coordination Act of 1974 (or any

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

superseding legislation) or by reason of a natural gas curtailment plant pursuant to the federal Power Act.

(3) Use of an alternative fuel by reason of any order or rule under § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan; and

(b) Other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

(9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(10) The reactivation of a very clean coal-fired electric utility steam generating unit.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 9VAC5-80-1865 for a PAL for that pollutant. Instead, the definition of "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

(a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- (b) Coal cleaning plants (with thermal dryers).
  - (c) Kraft pulp mills.
  - (d) Portland cement plants.
  - (e) Primary zinc smelters.
  - (f) Iron and steel mill plants.
  - (g) Primary aluminum ore reduction plants.
  - (h) Primary copper smelters.
  - (i) Municipal incinerators capable of charging more than 250 tons of refuse per day.
  - (j) Hydrofluoric acid plants.
  - (k) Sulfuric acid plants.
  - (l) Nitric acid plants.
  - (m) Petroleum refineries.
  - (n) Lime plants.
  - (o) Phosphate rock processing plants.
  - (p) Coke oven batteries.
  - (q) Sulfur recovery plants.
  - (r) Carbon black plants (furnace process).
  - (s) Primary lead smelters.
  - (t) Fuel conversion plants.
  - (u) Sintering plants.
  - (v) Secondary metal production plants.
  - (w) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).
  - (x) Fossil fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
  - (y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
  - (z) Taconite ore processing plants.
  - (aa) Glass fiber processing plants.
  - (bb) Charcoal production plants;
  - (2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or
  - (3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.
- b. A major stationary source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.
- c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:
- (1) Coal cleaning plants (with thermal dryers).

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- (2) Kraft pulp mills.
- (3) Portland cement plants.
- (4) Primary zinc smelters.
- (5) Iron and steel mills.
- (6) Primary aluminum ore reduction plants.
- (7) Primary copper smelters.
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric, sulfuric, or nitric acid plants.
- (10) Petroleum refineries.
- (11) Lime plants.
- (12) Phosphate rock processing plants.
- (13) Coke oven batteries.
- (14) Sulfur recovery plants.
- (15) Carbon black plants (furnace process).
- (16) Primary lead smelters.
- (17) Fuel conversion plants.
- (18) Sintering plants.
- (19) Secondary metal production plants.
- (20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).
- (21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (23) Taconite ore processing plants.
- (24) Glass fiber processing plants.
- (25) Charcoal production plants.
- (26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.
- (27) Any other stationary source category that, as of August 7, 1980, is being regulated under 40 CFR Parts 60 and 61.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under NSR programs that are part of the applicable implementation plan.

"Net emissions increase" means:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:
- (1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-1605 G; and
  - (2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.
- b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
- (1) The date five years before construction on the particular change commences; and
  - (2) The date that the increase from the particular change occurs.
- c. An increase or decrease in actual emissions is creditable only if (i) it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and (ii) the ~~board~~ department has not relied on it in issuing a permit for the source under this article (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.
- d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
- e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- f. A decrease in actual emissions is creditable only to the extent that:
- (1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;
  - (2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and
  - (3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.
- h. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"New source performance standard" or "NSPS" means the U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410.

"New source review (NSR) permit" means a permit issued under the new source review program.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

"PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the ~~board~~ department that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

stationary source. In determining the projected actual emissions (before beginning actual construction), the owner of the major stationary source:

- a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved implementation plan;
- b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and
- c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or
- d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

- a. Has not been in operation for the two-year period prior to the enactment of the federal Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;
- b. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
- c. Is equipped with low-NOX burners prior to the time of commencement of operations following reactivation; and
- d. Is otherwise in compliance with the requirements of the federal Clean Air Act.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means:

- a. Any pollutant for which an ambient air quality standard has been promulgated. This includes, but is not limited to, the following:
  - (1) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued under this article. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this article.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

(2) Any pollutant identified under this subdivision as a constituent or precursor to a pollutant for which an ambient air quality standard has been promulgated. Precursors identified for the purposes of this article shall be the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(b) Sulfur dioxide is a precursor to  $PM_{2.5}$  in all attainment and unclassifiable areas.

(c) Nitrogen oxides are presumed to be precursors to  $PM_{2.5}$  in all attainment and unclassifiable areas, unless the ~~board~~ department determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient  $PM_{2.5}$  concentrations.

(d) Volatile organic compounds are presumed not to be precursors to  $PM_{2.5}$  in any attainment or unclassifiable area, unless the ~~board~~ department determines that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient  $PM_{2.5}$  concentrations.

b. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act.

c. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act.

d. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act; except that any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act or added to the list pursuant to § 112(b)(2), which have not been delisted pursuant to § 112(b)(3), are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Replacement unit" means an emissions unit for which all the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The replacement does not change the basic design parameters of the process unit.

d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Repowering" means:

a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

b. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

c. The ~~board~~ department may give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under § 409 of the federal Clean Air Act.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of SO <sub>2</sub> emissions; 40 tpy of NO <sub>x</sub> emissions unless demonstrated not to be a PM <sub>2.5</sub> precursor under the definition of "regulated NSR pollutant"
Ozone	40 tpy of volatile organic compounds or NO <sub>x</sub>
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H <sub>2</sub> S)	10 tpy
Total Reduced Sulfur (including H <sub>2</sub> S)	10 tpy
Reduced Sulfur Compounds (including H <sub>2</sub> S)	10 tpy

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 <sup>-6</sup> tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO <sub>2</sub> and HCl)	40 tpy
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	50 tpy

b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a class I area and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup> (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is significant for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

**9VAC5-80-1625. General.**

A. No owner or other person shall begin actual construction of any new major stationary source or major modification without first obtaining from the ~~board~~ department a permit to

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

construct and operate such source. The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.

B. The requirements of this article apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this article otherwise provides.

C. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining a permit from the ~~board~~ department to relocate the unit.

D. Prior to the decision of the ~~board~~ department, all permit applications will be subject to a public comment period, a public hearing will be held as provided in 9VAC5-80-1775.

E. The ~~board~~ department will take actions to combine permit terms and conditions as provided in 9VAC5-80-1915. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-1925 as explained in subsection F of this section.

F. The ~~board~~ department will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1925. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection E of this section.

G. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of 9VAC5-50 (New and Modified Stationary Sources), Article 4 (9VAC5-60-200 et seq.) of 9VAC5-60 (Hazardous Air Pollutant Sources), or Article 5 (9VAC5-60-300) of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the ~~board~~ department. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

H. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

**9VAC5-80-1655. Applications.**

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures acceptable to the ~~board~~ department. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. For projects with phased development, a single application may be submitted covering the entire project.

C. Any application form, report, or certification submitted to the ~~board~~ department shall comply with the provisions of 9VAC5-20-230.

**9VAC5-80-1665. Compliance with local zoning requirements.**

No provision of this part or any permit issued thereunder shall relieve an owner of the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the ~~board~~ department of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

**9VAC5-80-1675. Compliance determination and verification by performance testing.**

A. Compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.

B. Testing required by this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the ~~board~~ department shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

C. The requirements of this section shall be met unless the ~~board~~ department:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the ~~board~~ department has determined to be adequate for indicating whether a specific source is in compliance;
4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the ~~board~~ department reasonably expects the new or modified source to perform in compliance with applicable standards; or
5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the ~~board's~~ department's satisfaction that the source is in compliance with the applicable standard.

D. The provisions for the granting of waivers under subsection C of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the ~~board~~ department to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

E. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirements of the implementation plan, or any other applicable federal requirements promulgated under the federal Clean Air Act.

**9VAC5-80-1685. Stack heights.**

A. The provisions of 9VAC5-50-20 H apply.

B. Prior to issuing a permit with a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by subdivision 1 or 2 of the GEP definition in 9VAC5-10-20, the ~~board~~ department will notify the public of the availability of

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

the demonstration study specified in subdivision 3 of the GEP definition and will provide opportunity for public hearing on it using the procedures set forth in 9VAC5-80-1775.

**9VAC5-80-1695. Exemptions.**

A. The requirements of this article shall not apply to a particular major stationary source or major modification if:

1. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- a. Coal cleaning plants (with thermal dryers).
- b. Kraft pulp mills.
- c. Portland cement plants.
- d. Primary zinc smelters.
- e. Iron and steel mills.
- f. Primary aluminum ore reduction plants.
- g. Primary copper smelters.
- h. Municipal incinerators capable of charging more than 250 tons of refuse per day.
- i. Hydrofluoric acid plants.
- j. Sulfuric acid plants.
- k. Nitric acid plants.
- l. Petroleum refineries.
- m. Lime plants.
- n. Phosphate rock processing plants.
- o. Coke oven batteries.
- p. Sulfur recovery plants.
- q. Carbon black plants (furnace process).
- r. Primary lead smelters.
- s. Fuel conversion plants.
- t. Sintering plants.
- u. Secondary metal production plants.
- v. Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).
- w. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
- x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- y. Taconite ore processing plants.
- z. Glass fiber processing plants.
- aa. Charcoal production plants.
- bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- cc. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60 or 61; or
2. The source or modification is a portable stationary source that has previously received a permit under this article, and
  - a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;
  - b. The emissions from the source would not exceed its allowable emissions;
  - c. The emissions from the source would affect no class I area and no area where an applicable increment is known to be violated; and
  - d. Reasonable notice is given to the ~~board~~ department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the ~~board~~ department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the ~~board~~ department.
- B. The requirements of this article shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.
- C. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:
  1. Would affect no class I area and no area where an applicable increment is known to be violated; and
  2. Would be temporary.
- D. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.
- E. The ~~board~~ department may exempt a proposed major stationary source or major modification from the requirements of 9VAC5-80-1735 with respect to monitoring for a particular pollutant if:
  1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:
    - Carbon monoxide -- 575  $\mu\text{g}/\text{m}^3$ , 8-hour average
    - Nitrogen dioxide -- 14  $\mu\text{g}/\text{m}^3$ , annual average
    - PM<sub>2.5</sub> -- 0  $\mu\text{g}/\text{m}^3$ , 24-hour average\*
    - PM<sub>10</sub> -- 10  $\mu\text{g}/\text{m}^3$ , 24-hour average
    - Sulfur dioxide -- 13  $\mu\text{g}/\text{m}^3$ , 24-hour average
    - Ozone\*\*
    - Lead -- 0.1  $\mu\text{g}/\text{m}^3$ , 3-month average
    - Fluorides -- 0.25  $\mu\text{g}/\text{m}^3$ , 24-hour average



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

Total reduced sulfur -- 10 µg/m<sup>3</sup>, 1-hour average

Hydrogen sulfide -- 0.2 µg/m<sup>3</sup>, 1-hour average

Reduced sulfur compounds -- 10 µg/m<sup>3</sup>, 1-hour average; or

\*No exemption is available with regard to PM<sub>2.5</sub>.

\*\*No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or NO<sub>x</sub> subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision 1 of this subsection, or the pollutant is not listed in subdivision 1 of this subsection.

F. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the ~~board~~ department that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

**9VAC5-80-1715. Source impact analysis.**

A. The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

1. Any ambient air quality standard in any air quality control region; or
2. Any applicable maximum allowable increase over the baseline concentration in any area.

B. The following applies to any new major stationary source or major modification if it would cause or contribute to a violation of any ambient air quality standard.

1. A new major stationary source or major modification will be considered to cause or contribute to a violation of an ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable air quality standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO <sub>2</sub>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>		25.0 µg/m <sup>3</sup>	
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>			
PM <sub>2.5</sub>	0.3 mg/m <sup>3</sup>	1.2 mg/m <sup>3</sup>			
NO <sub>2</sub>	1.0 µg/m <sup>3</sup>				

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

CO	500 $\mu\text{g}/\text{m}^3$	2000 $\mu\text{g}/\text{m}^3$
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2. A proposed new major stationary source or major modification may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the new major stationary source or major modification would otherwise cause or contribute to a violation of any ambient air quality standard. In the absence of such emission reductions, the ~~board~~ department will deny the proposed construction.

3. The requirements of this subsection do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

**9VAC5-80-1735. Air quality analysis.**

A. Preapplication analysis shall be conducted as follows:

1. Any application for a permit under this article shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

- a. For the source, each pollutant that it would have the potential to emit in a significant amount;
- b. For the modification, each pollutant for which it would result in a significant net emissions increase.

2. With respect to any such pollutant for which no ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the ~~board~~ department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the ~~board~~ department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

5. The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of §IV of Appendix S to 40 CFR Part 51 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

B. The owner of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the ~~board~~ department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

C. The owner of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-1745. Source information.**

The owner of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this article.

A. With respect to a source or modification to which 9VAC5-80-1705, 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 apply, such information shall include:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;
2. A detailed schedule for construction of the source or modification;
3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

B. Upon request of the ~~board~~ department, the owner shall also provide information on:

1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and
2. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth that has occurred since the baseline date in the area the source or modification would affect.

**9VAC5-80-1755. Additional impact analyses.**

A. The owner shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

B. The owner shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

C. The ~~board~~ department may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the ~~board~~ department deems necessary and appropriate.

**9VAC5-80-1765. Sources affecting federal class I areas -- additional requirements.**

A. The ~~board~~ department shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of the following actions related to the consideration of such permit:

1. Notification of the permit application status as provided in 9VAC5-80-1773 A.
2. Notification of the public comment period on the application as provided in 9VAC5-80-1775 F 2.
3. Notification of the final determination on the application and issuance of the permit as provided in 9VAC5-80-1773 D.
4. Notification of any other action deemed appropriate by the ~~board~~ department.

B. The ~~board~~ department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The ~~board~~ department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under 9VAC5-80-1773 B, and shall make available to them any materials used in making that determination, promptly after the ~~board~~ department makes such determination. Finally, the ~~board~~ department shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

C. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the ~~board~~ department, whether a proposed source or modification will have an adverse impact on such values.

D. The ~~board~~ department shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subsection B of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the ~~board~~ department finds that such an analysis does not demonstrate to the satisfaction of the ~~board~~ department that an adverse impact on visibility will result in the federal class I area, the ~~board~~ department shall, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.

E. The federal land manager of any such lands may demonstrate to the ~~board~~ department that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the ~~board~~ department concurs with such demonstration, then it shall not issue the permit.

F. The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and so certifies, the ~~board~~ department may, provided that the applicable requirements of this article are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, PM<sub>2.5</sub>, PM<sub>10</sub>, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

MAXIMUM ALLOWABLE INCREASE (micrograms per cubic meter)	
PM <sub>2.5</sub> :	
Annual arithmetic mean	4
24 hour maximum	9
PM <sub>10</sub> :	
Annual arithmetic mean	17

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

24 hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
Three-hour maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

G. The owner of a proposed source or modification that cannot be approved under subsection F of this section may demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the ~~board~~ department shall issue a permit to such source or modification pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

H. In any case whether the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the ~~board~~ department shall issue a permit pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

I. In the case of a permit issued pursuant to subsection G or H of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE (micrograms per cubic meter)		
Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

**9VAC5-80-1773. Action on permit application.**

A. Within 30 days after receipt of an application, the ~~board~~ department will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the ~~board~~ department in writing and will include (i) a

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the ~~board~~ department will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application shall be, for the purpose of this article, the date on which the ~~board~~ department received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. The ~~board~~ department will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for these steps is normally one year following receipt of a complete application. The ~~board~~ department may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-1705 and the preliminary determination whether construction should be approved, approved with conditions, or disapproved.
2. Complete the public participation requirements in accordance with 9VAC5-80-1775.
3. Consider the public comments received in accordance with 9VAC5-80-1775.
4. Complete the final review and analysis and the final determination of the ~~board~~ department.

C. The ~~board~~ department will consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing required by 9VAC5-80-1775 E in making a final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The ~~board~~ department will consider the applicant's response in making a final decision. The ~~board~~ department will make all comments available for public inspection in the same locations where the ~~board~~ department made available preconstruction information relating to the proposed source or modification.

~~D. The board After completion of the steps in subsections B and C of this section, the department will make a final decision on an application after completion of the steps in subsections B and C of this section except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board department will review any request made under 9VAC5-80-1775 G, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.~~

E. The ~~board~~ department will notify the applicant in writing of the final decision and make such notification available for public inspection at the same location where the ~~board~~ department made available preconstruction information and public comments relating to the source or modification.

F. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

G. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing will be made available for public inspection at the same location as was the information in 9VAC5-80-1775 F 1.

H. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, pursuant to this section, the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

**9VAC5-80-1775. Public participation.**

A. No later than 30 days after receiving the initial determination notification required under 9VAC5-80-1773 A, the applicant shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the ~~board~~ department and shall include (i) the name, location, and type of the source and (ii) the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. 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 and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the ~~board~~ department will attend and provide information and answer questions on the permit application review process.

D. Upon a determination by the ~~board~~ department that an alternative plan will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. The ~~board~~ department will provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

F. The ~~board~~ department will notify the public by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification will contain a statement of the estimated local impact of the proposed source or modification, which at a minimum will provide information regarding specific pollutants and the total quantity of each that may be emitted, and will list the type and quantity of any fuels to be used. The notification will be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the board for at least 15 days after any hearing ~~unless the board votes to shorten the period.~~

1. All materials the applicant submitted, exclusive of confidential information under 9VAC5-170-60; a copy of the preliminary determination; and a copy or summary of other materials, if any, considered in making the preliminary determination will be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice will be sent to the applicant, the administrator, and to officials and agencies having cognizance over the location where the proposed construction would

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

occur as follows: (i) local air pollution control agencies, (ii) the chief elected official and chief administrative officer of the city and county where the source or modification would be located and of any other locality particularly affected, (iii) the planning district commission, and (iv) any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

~~G. Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:~~

- ~~1. The name, mailing address, and telephone number of the requester.~~
- ~~2. The names and addresses of all persons for whom the requester is acting as a representative ; for the purposes of this requirement, an unincorporated association is a person.~~
- ~~3. The reason why direct consideration by the board is requested.~~
- ~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.~~
- ~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law. (Reserved.)~~

~~H. The board department will review any request made under subsection G of this section and will take final action on the request application as provided in 9VAC5-80-1773 D.~~

~~I. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the board department will process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.~~

~~J. If appropriate, the board department may hold a public briefing on the preliminary determination prior to the public comment period but no later than the day before the beginning of the public comment period. The board department will notify the public of the time and place of the briefing by advertisement in a newspaper of general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification will be published at least 30 days prior to the day of the briefing.~~

~~K. If the board department finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:~~

- ~~1. The applicant shall perform the following:~~



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request board consideration~~ as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and
  - b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~
2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.
  3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit, unless the ~~board votes~~ director chooses to shorten the period.

**9VAC5-80-1785. Source obligation.**

A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in 9VAC5-80-1985.

B. The provisions of this subsection apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner elects to use the method specified in subdivisions a through c of the definition of "projected actual emissions" for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner shall document and maintain a record of the following information:
  - a. A description of the project;
  - b. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
  - c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subdivision c of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.
2. If the emissions unit is an existing electric utility steam generating unit, no less than 30 days before beginning actual construction, the owner shall provide a copy of the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

information set out in subdivision 1 of this subsection to the ~~board~~ department. Nothing in this subdivision shall be construed to require the owner of such a unit to obtain any determination from the ~~board~~ department before beginning actual construction.

3. The owner shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subdivision 1 b of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner shall submit a report to the ~~board~~ department within 60 days after the end of each calendar year during which records must be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the calendar year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner shall submit a report to the ~~board~~ department if the annual emissions, in tons per year, from the project identified in subdivision 1 of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to subdivision 1 c of this subsection), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision 1 c of this subsection. Such report shall be submitted to the ~~board~~ department within 60 days after the end of such calendar year. The report shall contain the following:

- a. The name, address and telephone number of the major stationary source;
- b. The annual emissions as calculated pursuant to subdivision 3 of this subsection; and
- c. Any other information that the owner wishes to include in the report (for example, an explanation as to why the emissions differ from the preconstruction projection).

C. The owner of the source shall make the information required to be documented and maintained pursuant to subsection B of this section available for review upon a request for inspection by the ~~board~~ department or the general public pursuant to the requirements contained in 9VAC5-170-60.

D. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

E. For each project subject to subsection B of this section, the owner shall provide notice of the availability of the information set out in subdivision B 1 of this section to the ~~board~~ department no less than 30 days before beginning actual construction. The notice shall include the location of the information and the name, address and telephone number of the contact from whom the information may be obtained. Should subsequent information become available to the ~~board~~ department to indicate that a given project subject to subsection B is a part of a major modification that resulted in a significant emissions increase, the ~~board~~ department will proceed as if the owner is in violation of 9VAC5-80-1625 A and may institute appropriate enforcement action as provided in subsection A of this section. Nothing in this subsection shall be construed to require the owner of the source to obtain any determination from the ~~board~~ department before beginning actual construction.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-1825. Innovative control technology.**

A. Prior to the close of the public comment period under 9VAC5-80-1775, an owner of a proposed major stationary source or major modification may request, in writing, that the ~~board~~ department approve a system of innovative control technology.

B. The ~~board~~ department, with the consent of the governor(s) of affected state(s), will determine that the source or modification may employ a system of innovative control technology, if:

1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
2. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under 9VAC5-80-1705 B by a date specified by the ~~board~~ department. Such date shall not be later than four years from the time of startup or seven years from permit issuance;
3. The source or modification would meet the requirements of 9VAC5-80-1705 and 9VAC5-80-1715 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the ~~board~~ department;
4. The source or modification would not, before the date specified by the ~~board~~ department:
  - a. Cause or contribute to a violation of an applicable ambient air quality standard; or
  - b. Affect any area where an applicable increment is known to be violated;
5. All other applicable requirements including those for public participation have been met; and
6. The provisions of 9VAC5-80-1765 (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

C. The ~~board~~ department will withdraw any approval to employ a system of innovative control technology made under this article, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or
2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
3. The ~~board~~ department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

D. If a source or modification fails to meet the requirement level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection C of this section, the ~~board~~ department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

**9VAC5-80-1865. Actuals plantwide applicability limits (PALs).**

A. The ~~board~~ department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

1. Any physical change in or change in the method of operation of a major stationary source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- a. Is not a major modification for the PAL pollutant;
  - b. Does not have to be approved through this article; and
  - c. Is not subject to the provisions in 9VAC5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).
2. Except as provided under subdivision 1 c of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.
- B. As part of a permit application requesting a PAL, the owner of a major stationary source shall submit the following information to the ~~board~~ department for approval:
1. A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.
  2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.
  3. The calculation procedures that the major stationary source owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.
- C. The general requirements set forth in this subsection shall apply to the establishment of PALs.
1. The ~~board~~ department may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:
    - a. The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.
    - b. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.
    - c. The PAL permit shall contain all the requirements of subsection F of this section.
    - d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.
    - e. Each PAL shall regulate emissions of only one pollutant.
    - f. Each PAL shall have a PAL effective period of 10 years.
    - g. The owner of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections M, N,

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

and O of this section for each emissions unit under the PAL through the PAL effective period.

2. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 9VAC5-80-2120 F through N unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

D. PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures prescribed in the applicable permit programs identified in the definition of PAL permit. In no case may the ~~board~~ department issue a PAL permit unless the ~~board~~ department provides the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The ~~board~~ department will address all material comments before taking final action on the permit.

E. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant (as reflected in the definition of "significant") level for the PAL pollutant. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period shall be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period shall be added to the PAL level in an amount equal to the potential to emit of the units. The ~~board~~ department will specify a reduced PAL level or levels (in tons per year) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirements that the ~~board~~ department is aware of prior to issuance of the PAL permit. For instance, if the source owner will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year.
2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).
3. Specification in the PAL permit that if a major stationary source owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the ~~board~~ department, or until the ~~board~~ department determines that the revised PAL permit will not be issued.
4. A requirement that emission calculations for compliance purposes shall include emissions from startups, shutdowns, and malfunctions.
5. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection I of this section.
6. The calculation procedures that the major stationary source owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision N 1 of this section.
7. A requirement that the major stationary source owner monitor all emissions units in accordance with the provisions under subsection M of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

8. A requirement to retain the records required under subsection N of this section on site. Such records may be retained in an electronic format.
  9. A requirement to submit the reports required under subsection O of this section by the required deadlines.
  10. Any other requirements that the ~~board~~ department deems necessary to implement and enforce the PAL.
- G. The PAL effective period shall be 10 years.
- H. The requirements for the reopening of the PAL permit set forth in this subsection shall apply to actuals PALs.
1. During the PAL effective period, the ~~board~~ department will reopen the PAL permit to:
    - a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;
    - b. Reduce the PAL if the owner of the major stationary source creates creditable emissions reductions for use as offsets under 9VAC5-80-2120 F through N; and
    - c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.
  2. The ~~board~~ department may reopen the PAL permit for any of the following reasons:
    - a. Reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) with compliance dates after the PAL effective date.
    - b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the ~~board~~ department may impose on the major stationary source.
    - c. Reduce the PAL if the ~~board~~ department determines that a reduction is necessary to avoid causing or contributing to a violation of an ambient air standard or ambient air increment in 9VAC5-80-1635, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.
  3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.
- I. Any PAL that is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:
1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:
    - a. Within the time frame specified for PAL renewals in subdivision J 2 of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the ~~board~~ department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

subdivision K 4 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The ~~board~~ department will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the ~~board~~ department determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The ~~board~~ department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the ~~board~~ department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change in or change in the method of operation at the major stationary source will be subject to major NSR program requirements if such change meets the definition of "major modification."

5. The major stationary source owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, or NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9VAC5-80-1605 C, but were eliminated by the PAL in accordance with the provisions in subdivision A 1 c of this section.

J. The requirements for the renewal of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The ~~board~~ department will follow the procedures specified in subsection D of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the ~~board~~ department.

2. A major stationary source owner shall submit a timely application to the ~~board~~ department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued, or until the ~~board~~ department determines that the revised permit with the renewed PAL will not be issued, and a permit is issued pursuant to subsection I of this section.

3. The application to renew a PAL permit shall contain the following information:

a. The information required in subsection B of this section.

b. A proposed PAL level.

c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

d. Any other information the owner wishes the ~~board~~ department to consider in determining the appropriate level for renewing the PAL.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

K. The requirements for the adjustment of the PAL set forth in this subsection shall apply to actuals PALs. In determining whether and how to adjust the PAL, the ~~board~~ department will consider the options outlined in subdivisions 1 and 2 of this subsection. However, in no case may any such adjustment fail to comply with subdivision 3 of this subsection.

1. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the ~~board~~ department may renew the PAL at the same level without considering the factors set forth in subdivision 2 of this subsection; or
2. The ~~board~~ department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the ~~board~~ department in a written rationale.
3. Notwithstanding subdivisions 1 and 2 of this subsection:
  - a. If the potential to emit of the major stationary source is less than the PAL, the ~~board~~ department will adjust the PAL to a level no greater than the potential to emit of the source; and
  - b. The ~~board~~ department will not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection L of this section.
4. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the ~~board~~ department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

L. The requirements for increasing a PAL during the PAL effective period set forth in this subsection shall apply to actuals PALs.

1. The ~~board~~ department may increase a PAL emission limitation only if the owner of the major stationary source complies with the following provisions:
  - a. The owner of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.
  - b. As part of this application, the major stationary source owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.
  - c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 a of this subsection, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- shall comply with any emissions requirements resulting from the major NSR program process (e.g., BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.
2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
  3. The ~~board~~ department will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.
  4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.
- M. The requirements for monitoring the PAL set forth in this subsection apply to actuals PALs.
1. The general requirements for monitoring a PAL set forth in this subdivision apply to actuals PALs.
    - a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
    - b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subdivision and must be approved by the ~~board~~ department.
    - c. Notwithstanding subdivision 1 b of this subdivision, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the ~~board~~ department.
    - d. Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.
  2. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 3 through 9 of this subsection:
    - a. Mass balance calculations for activities using coatings or solvents;
    - b. CEMS;
    - c. CPMS or PEMS; and
    - d. Emission factors.
  3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
    - a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
    - b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the ~~board~~ department determines there is site-specific data or a site-specific monitoring program to support another content within the range.
4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
  - a. CEMS shall comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and
  - b. CEMS shall sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.
5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
  - a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and
  - b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the ~~board~~ department, while the emissions unit is operating.
6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
  - a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
  - b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
  - c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the ~~board~~ department determines that testing is not required.
7. A source owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.
8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the ~~board~~ department will, at the time of permit issuance:
  - a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or
  - b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.
9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the ~~board~~ department. Such testing shall occur at least once every five years after issuance of the PAL.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

N. The requirements for recordkeeping in the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The PAL permit shall require an owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.
2. The PAL permit shall require an owner to retain a copy of the following records for the duration of the PAL effective period plus five years:
  - a. A copy of the PAL permit application and any applications for revisions to the PAL; and
  - b. Each annual certification of compliance pursuant to the federal operating permit and the data relied on in certifying the compliance.

O. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the ~~board~~ department in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the ~~board~~ department within 30 days of the end of each reporting period. This report shall contain the following information:
  - a. The identification of owner and operator and the permit number.
  - b. Total annual emissions (tons per year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision N 1 of this section.
  - c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.
  - d. A list of any emissions units modified or added to the major stationary source during the preceding six-month period.
  - e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
  - f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision M 7 of this section.
  - g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The major stationary source owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9VAC5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9VAC5-80-110 F 2 b. The reports shall contain the following information:

- a. The identification of owner and operator and the permit number;
- b. The PAL requirement that experienced the deviation or that was exceeded;
- c. Emissions resulting from the deviation or the exceedance; and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

d. A signed statement by the responsible official (as defined by the applicable federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the ~~board~~ department the results of any revalidation test or method within three months after completion of such test or method.

P. The ~~board~~ department will not issue a PAL that does not comply with the requirements of this section after September 1, 2006. The ~~board~~ department may supersede any PAL that was established prior to September 1, 2006, with a PAL that complies with the requirements of this section.

**9VAC5-80-1915. Actions to combine permit terms and conditions.**

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the ~~board~~ department may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the ~~board~~ department.

3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

d. To take an action to issue a permit or change a permit for any physical change in or change in the method of operation of a major stationary source that is subject to the provisions in 9VAC5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

B. The ~~board~~ department may take actions to combine the terms and conditions of state operating permits and new source review permits along with any changes to state operating permits and new source review permits.

C. If the ~~board~~ department and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the ~~board~~ department may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the ~~board~~ department may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.

4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:

a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.

b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.

c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

**9VAC5-80-1925. Actions to change permits.**

A. The general requirements for actions to make changes to permits issued under this article are as follows:

1. Except as provided in subdivision 3 of this subsection changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-1935 through 9VAC5-80-1965.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department as specified in subsection C of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the ~~board~~ department for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit changes can be found in 9VAC5-80-1935 through 9VAC5-80-1955.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-1965.

**9VAC5-80-1935. Administrative permit amendments.**

A. Administrative permit amendments shall be used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-2170 have been fulfilled.

B. The administrative permit amendment procedures are as follows:

1. The ~~board~~ department will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department will incorporate the changes without providing notice to the public under 9VAC5-80-1775. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**9VAC5-80-1945. Minor permit amendments.**

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement.

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

3. Do not require or change a case-by-case determination of an emissions limitation or other requirement.

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

5. Are not required to be processed as a significant amendment under 9VAC5-80-1955; or as an administrative permit amendment under 9VAC5-80-1935.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require new or more frequent monitoring or reporting by the permittee.

3. Designate any term or permit condition that meets the criteria in 9VAC5-80-1625 G 1 as state-only enforceable as provided in 9VAC5-80-1625 G 2 for any permit issued under this article or any regulation from which this article is derived.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the ~~board~~ department and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. In order for the underlying statutory or regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.

D. A request for the use of minor permit amendment procedures shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs, along with a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-1775 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit amendment.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify if the applicant has submitted a proposed permit amendment. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

permit terms and conditions the owner seeks to modify may be enforced against the owner.

**9VAC5-80-1955. Significant amendment procedures.**

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1945 or as administrative amendments under 9VAC5-80-1935.
2. Significant amendment procedures shall be used for those permit amendments that meet any of the following criteria:
  - a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.
  - b. Require or change a case-by-case determination of an emissions limitation or other requirement.
  - c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. The provisions of 9VAC5-80-1775 shall apply to requests made under this section.

D. The board department will normally take final action on significant permit amendments within 180 days after receipt of a complete request, ~~except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25.~~ The board department may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board department under subsection D of this section.

**9VAC5-80-1965. Reopening for cause.**

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.
2. The board department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
3. The board department determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the requirements contained in this article.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

**9VAC5-80-1975. Transfer of permits.**

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities that are exempt from the provisions of this article by 9VAC5-80-1695 A 2.

**9VAC5-80-1985. Permit invalidation, suspension, revocation, and enforcement.**

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction or modification is not commenced within 18 months from the date the permit is granted.

B. A permit granted pursuant to this article shall become invalid if a program of construction or modification is discontinued for a period of 18 months or more or if a program of construction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase shall commence construction within 18 months of the projected and approved commencement date.

C. The ~~board~~ department may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the ~~board~~ department, such extensions may be granted using the procedures for minor amendments in 9VAC5-80-1945.

D. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article, or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the ~~board~~ department may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

F. The ~~board~~ department may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

4. Causes emissions from the stationary source that result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

G. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any permit for any of the grounds for revocation contained in subsection B of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in 9VAC5 Chapter 20 (9VAC5-20) and the Virginia Air Pollution Control Law.

J. The ~~board~~ department will notify the applicant in writing of its decision, with its reasons to change, suspend or revoke a permit, or to render a permit invalid.

**9VAC5-80-2000. Applicability.**

Article 9

Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region

A. The provisions of this article apply to the construction of any new major stationary source or a major modification that is major for the pollutant for which the area is designated as nonattainment. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source or major modification.

B. The provisions of this article apply in (i) nonattainment areas designated in 9VAC5-20-204 or (ii) the Ozone Transport Region as defined in 9VAC5-80-2010 C. This article applies to all localities in the Ozone Transport Region regardless of a locality's nonattainment status.

C. If the Ozone Transport Region is designated attainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements for areas classified as moderate in 9VAC5-80-2120 B 2. If the Ozone Transport Region is designated nonattainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements of 9VAC5-80-2120 B depending on the classification except if the classification is marginal or there is no classification, the classification shall be moderate for purpose of applying 9VAC5-80-2120 B.

D. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not commenced on the source or modification.

E. Unless specified otherwise, the provisions of this article apply as follows:

1. Provisions referring to "sources," "new and/or modified sources" or "stationary sources" apply to the construction of all major stationary sources and major modifications.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), or Article 8 (9VAC5-80-1605 et seq.) of this part.

3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9VAC5-80-2020 E.

F. Unless otherwise approved by the ~~board~~ department or prescribed in these regulations, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-2060 A prior to September 1, 2006. Any permit applications that have not been determined to be complete as of September 1, 2006, shall be subject to the new provisions.

G. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

H. The requirements of this article will be applied in accordance with the following principles:

1. Except as otherwise provided in subsection I of this section, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: (i) a significant emissions increase and (ii) a significant net emissions increase. A project is not a major modification if it does not cause a significant emissions increase. If a project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 and 4 of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the source (i.e., the second step of the process) is contained in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

5. The hybrid test for projects that involve multiple types of emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 and 4 of this subsection as applicable with respect to each emissions unit, for each type of emissions unit is significant for that pollutant. For

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

example, if a project involves both an existing emissions unit and a new unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 4 of this subsection for the new unit.

I. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9VAC5-80-2144.

J. The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50 and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5 Chapter 60.

K. The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

**9VAC5-80-2010. Definitions.**

A. As used in this article, all words or terms not defined here shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-50-270, and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a, b, and c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-2144. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The ~~board~~ department may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

a. The applicable standards set forth in 40 CFR Parts 60, 61, and 63;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- b. Any applicable implementation plan emissions limitation including those with a future compliance date; or
- c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

- a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.
- b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.
- c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation, or other requirement established pursuant to § 112 or 129 of the federal Clean Air Act as amended in 1990.
- d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
- f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.
- g. Any compliance monitoring requirements established pursuant to either § 504(b) or 114(a)(3) of the federal Clean Air Act.
- h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.
- i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.
- j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.
- k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.
- l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The ~~board~~ department may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the 10-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the ~~board~~ department for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. The ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source shall currently comply, had such source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this definition.

"Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit that are of a permanent nature. Such activities include installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those onsite activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" or "BACT" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the ~~board~~ department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the ~~board~~ department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of \$2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting additional information.

"Construction" means any physical change in or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter values on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25-megawatt electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this article, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit is an existing emissions unit.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by ~~the board~~ or the department and meet the following criteria:

- a. Are permanent;
- b. Contain a legal obligation for the owner to adhere to the terms and conditions;
- c. Do not allow a relaxation of a requirement of the implementation plan;
- d. Are technically accurate and quantifiable;
- e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and
- f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include the following:

- a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
- b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.
- d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, 111(d), or 129 of the federal Clean Air Act.
- e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.
- f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:
  - (1) The operating permit program has been approved by EPA into the implementation plan under § 110 of the federal Clean Air Act.
  - (2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.
  - (3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by EPA and the public.

g. Limitations and conditions in a regulation of the board or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Lowest achievable emissions rate" or "LAER" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation that is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation that is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas in subdivision a (1) of the definition of "major stationary source."

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in (i) a significant emissions increase of a regulated NSR pollutant; and (ii) a significant net emissions increase of that pollutant from the source.

b. Any significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds shall be considered significant for ozone.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

c. A physical change in or change in the method of operation shall not include the following:

- (1) Routine maintenance, repair, and replacement.
- (2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.
- (3) Use of an alternative fuel by reason of an order or rule § 125 of the federal Clean Air Act.
- (4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
- (5) Use of an alternative fuel or raw material by a stationary source that:
  - (a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or
  - (b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.
- (6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.
- (7) Any change in ownership at a stationary source.
- (8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:
  - (a) The applicable implementation plan; and
  - (b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the source is complying with the requirements under 9VAC5-80-2144 for a PAL for that pollutant. Instead, the definition for "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

- (1) Any stationary source of air pollutants that emits, or has the potential to emit, (i) 100 tons per year or more of a regulated NSR pollutant, (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9VAC5-20-204, (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

9VAC5-20-204, or (iv) 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the Ozone Transport Region; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category, which as of August 7, 1980, is being regulated under 40 CFR Part 60, 61, or 63.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under the NSR program that are part of the applicable implementation plan.

"Net emissions increase" means:

a. With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-2000 H; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9VAC5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and

(2) The ~~board~~ department has not relied on it in issuing a permit for the source pursuant to this article which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

(3) The ~~board~~ department has not relied on it in issuing any permit pursuant to this chapter or the ~~board~~ department has not relied on it in demonstrating attainment or reasonable further progress in the implementation plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"New source performance standard" or "NSPS" means the U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources, as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-2000 et seq.) of this part. Any permit issued under such a program is a major NSR permit.

"Nonattainment pollutant" means, within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

"Ozone transport region" means the area established by § 184(a) of the federal Clean Air Act or any other area established by the administrator pursuant to § 176A of the federal Clean Air Act for purposes of ozone. For the purposes of this article, the Ozone Transport Region consists of the following localities: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

"Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-2144.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase," any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the ~~board~~ department that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (e.g., pounds per hour) on a continuous basis.

"Prevention of significant deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Project" means a physical change in or change in the method of operation of an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source. In determining the projected actual emissions before beginning actual construction, the owner shall:

- a. Consider all relevant information, including but not limited to historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan;
- b. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and
- c. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a, b, and c of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined under the definition of "potential to emit."

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the ~~board~~ department regarding the permit application.

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of an implementation plan and regular reductions thereafter) that are sufficient in the judgment of the ~~board~~ department to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the implementation plan for such area.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound.
- b. Any pollutant for which an ambient air quality standard has been promulgated.
- c. Any pollutant that is identified under this subdivision as a constituent or precursor of a general pollutant listed under subdivision a or b of this definition, provided that such constituent or precursor pollutant may only be regulated under this article as part of regulation of the general pollutant. Precursors identified for purposes of this article shall be the following:
  - (1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.
  - (2) Sulfur dioxide, nitrogen oxides, volatile organic compounds, and ammonia are precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area.
  - (3) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas, unless the ~~board~~ department determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.
  - (4) Volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area, unless the ~~board~~ department determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

d. PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in permits issued under this article. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this article.

"Replacement unit" means an emissions unit for which all the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

- a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
- b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- c. The replacement does not alter the basic design parameters of the process unit.
- d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

- a. Ozone nonattainment areas classified as serious or severe in 9VAC5-20-204.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM <sub>2.5</sub> precursor under the definition of "regulated NSR pollutant"
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy

- b. Other nonattainment areas.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM <sub>2.5</sub> precursor under the definition of "regulated NSR pollutant"
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

**9VAC5-80-2020. General.**

A. No owner or other person shall begin actual construction or modification of any new major stationary source or major modification without first obtaining from the ~~board~~ department a permit

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

to construct and operate such source. The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.

B. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining from the ~~board~~ department a permit to relocate the unit.

C. The ~~board~~ department will take actions to combine permit terms and conditions as provided in 9VAC5-80-2195. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-2200 as explained in subsection D of this section.

D. The ~~board~~ department will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-2200. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection C of this section.

E. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of 9VAC5-50 (New and Modified Stationary Sources), Article 4 (9VAC5-60-200 et seq.) of 9VAC5-60 (Hazardous Air Pollutant Sources), or Article 5 (9VAC5-60-300) of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the ~~board~~ department. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

F. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

**9VAC5-80-2030. Applications.**

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures acceptable to the ~~board~~ department. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted.

B. A separate application is required for each stationary source.

C. For projects with phased development, a single application should be submitted covering the entire project.

D. Any application form, report, or certification submitted to the ~~board~~ department shall comply with the provisions of 9VAC5-20-230.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-2040. Application information required.**

A. The ~~board~~ department will furnish application forms to applicants. Completion of these forms serves as initial registration of new and modified sources.

B. Each application for a permit shall include such information as may be required by the ~~board~~ department to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emissions standards which are applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.
2. A description of the source's processes and products (by Standard Industrial Classification Code).
3. All emissions of regulated NSR pollutants.
  - a. A permit application shall describe all emissions of regulated NSR pollutants emitted from any emissions unit or group of emissions units to be covered by the permit.
  - b. Emissions shall be calculated as required in the permit application form or instructions.
  - c. Fugitive emissions shall be included in the permit application to the extent quantifiable.
4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.
5. Actual emission rates in tons per year and other information as may be necessary to determine the net emissions increase of actual emissions.
6. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.
7. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated NSR pollutants at the source.
9. Calculations on which the information in subdivisions 3 through 8 of this subsection are based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.
10. Any additional information or documentation that the ~~board~~ department deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit, including the submission of measured air quality data at the proposed site prior to construction or modification. Such measurements shall be accomplished using procedures acceptable to the ~~board~~ department.
11. For major stationary sources, the location and registration number for all stationary sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth.
12. For major stationary sources, the analyses required by 9VAC5-80-2090 2 shall be provided by the applicant. Upon request, the ~~board~~ department will advise an applicant of the reasonable geographic limitation on the areas to be subject to an analysis to determine the air quality impact at the proposed source.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the ~~board~~ department.

**9VAC5-80-2050. Standards and conditions for granting permits.**

A. No permit will be granted pursuant to this article unless it is shown to the satisfaction of the ~~board~~ department that the following standards and conditions have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9VAC5 Chapter 50 (9VAC5-50).
2. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.
3. The ~~board~~ department determines that the following occurs:
  - a. By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained in accordance with 9VAC5-80-2120 such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this article, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the implementation plan) reasonable further progress; or
  - b. In the case of a new or modified major stationary source which is located in a zone, within the nonattainment area, identified by the administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the implementation plan; and
  - c. Any emission reductions required as a precondition of the issuance of a permit under subdivision a or b of this subdivision shall be state and federally enforceable before such permit may be issued.
4. The applicant shall demonstrate that all major stationary sources owned or operated by such applicant (or by any entity controlling, controlled by, or under common control with such applicant) in the Commonwealth are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under these regulations.
5. The administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this article.
6. The applicant shall demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source, that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

B. Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-270. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.
  2. In no case shall a standard result in emissions that would exceed the emissions rate based on the potential to emit of the emissions unit.
  3. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.
- C. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:
1. Emission standards.
  2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:
    - a. Limit on fuel sulfur content.
    - b. Limit on production rates with time frames as appropriate to support the emission standards.
    - c. Limit on raw material usage rate.
    - d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.
  3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.
  4. Specifications for air pollution control equipment installed or to be installed.
  5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:
    - a. Pressure indicators and required pressure drop.
    - b. Temperature indicators and required temperature.
    - c. pH indicators and required pH.
    - d. Flow indicators and required flow.
  6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.
  7. Stack test requirements.
  8. Reporting or recordkeeping requirements, or both.
  9. Continuous emission or air quality monitoring requirements, or both.
  10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

**9VAC5-80-2060. Action on permit application.**

A. Within 30 days after receipt of an application, the ~~board~~ department will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the ~~board~~ department in writing and shall include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

30 days after receipt of any additional information, the ~~board~~ department will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the ~~board~~ department received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. The ~~board~~ department will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for these steps is normally 180 days following receipt of a complete application. The ~~board~~ department may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-2090 and the preliminary determination of the ~~board~~ department.
2. Complete the public participation requirements in accordance with 9VAC5-80-2070.
3. Consider the public comments received in accordance with 9VAC5-80-2070.
4. Complete the final review and analysis and the final determination of the ~~board~~ department.

C. ~~The board~~ After completion of the steps in subsection B of this section, the department will normally take final action on an application after completion of the steps in subsection B of this section, except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-2070 G, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

D. The ~~board~~ department will notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9VAC5-80-2080.

E. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5 Chapter 170.

F. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9VAC5-80-2070 F 1.

G. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

**9VAC5-80-2070. Public participation.**

A. No later than 30 days after receiving the initial determination notification required under 9VAC5-80-2060 A, the applicant shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

The notice shall be approved by the ~~board~~ department and shall include (i) the name, location, and type of the source and (ii) the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. 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 and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the ~~board~~ department will attend and provide information and answer questions on the permit application review process.

D. Upon determination by the ~~board~~ department that an alternative plan will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the ~~board~~ department, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing shall be held with notice in accordance with subsection F of this section.

F. The ~~board~~ department will notify the public by advertisement in at least one newspaper of general circulation in the affected air quality control region of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the ~~board~~ department for at least 15 days after any hearing ~~unless the board votes to shorten the period.~~

1. Information on the permit application ; exclusive of confidential information under 9VAC5-170-60, as well as the preliminary review and analysis and preliminary determination of the ~~board~~ department shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.
2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator U.S. Environmental Protection Agency.
3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

~~G. Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:~~

- ~~1. The name, mailing address, and telephone number of the requester.~~
- ~~2. The names and addresses of all persons for whom the requester is acting as a representative ; for the purposes of this requirement, an unincorporated association is a person.~~
- ~~3. The reason why direct consideration by the board is requested.~~



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.~~

~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law. (Reserved.)~~

H. The ~~board~~ department will review any request made under subsection ~~G~~ of this section and will take final action on the request application as provided in 9VAC5-80-2060 C.

I. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the ~~board~~ department will process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

J. If appropriate, the ~~board~~ department may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the ~~board~~ department provides a public briefing, the requirements of subsection F of this section concerning public notification shall be followed.

K. If the ~~board~~ department finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request board consideration as to the date and location of a public hearing~~; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit, unless the ~~board votes~~ director chooses to shorten the period.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-2080. Compliance determination and verification by performance testing.**

A. Compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.

B. Testing required by this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the ~~board~~ department shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

C. The requirements of this section shall be met unless the ~~board~~ department:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the ~~board~~ department has determined to be adequate for indicating whether a specific source is in compliance;
4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the ~~board~~ department reasonably expects the new or modified source to perform in compliance with applicable standards; or
5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the ~~board's~~ department's satisfaction that the source is in compliance with the applicable standard.

D. The provisions for the granting of waivers under subsection C of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the ~~board~~ department to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

E. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirements of the implementation plan, or any other applicable federal requirements promulgated under the federal Clean Air Act.

**9VAC5-80-2090. Application review and analysis.**

No permit shall be granted pursuant to this article unless compliance with the standards in 9VAC5-80-2050 is demonstrated to the satisfaction of the ~~board~~ department by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9VAC5 Chapter 50 (9VAC5-50).
2. Applications shall be subject to an air quality analysis to determine the impact of nonattainment pollutant emissions.

**9VAC5-80-2091. Source obligation.**

A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in 9VAC5-80-2180.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner elects to use the method specified in subdivisions a through c of the definition of "projected actual emissions" for calculating projected actual emissions:

1. Before beginning actual construction of the project, the owner shall document and maintain a record of the following information:

- a. A description of the project;
- b. Identification of the emissions units whose emissions of a regulated NSR pollutant could be affected by the project; and
- c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subdivision c of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. If the emissions unit is an existing electric utility steam generating unit, no less than 30 days before beginning actual construction, the owner shall provide a copy of the information set out in subdivision 1 of this subsection to the ~~board~~ department. Nothing in this subdivision shall be construed to require the owner of such a unit to obtain any determination from the ~~board~~ department before beginning actual construction.

3. The owner shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subdivision 1 b of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner shall submit a report to the ~~board~~ department within 60 days after the end of each year during which records shall be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner shall submit a report to the ~~board~~ department if the annual emissions, in tons per year, from the project identified in subdivision 1 of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to subdivision 1 c of this subsection) by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision 1 c of this subsection. Such report shall be submitted to the ~~board~~ department within 60 days after the end of such year. The report shall contain the following:

- a. The name, address and telephone number of the major stationary source;
- b. The annual emissions as calculated pursuant to subdivision 3 of this subsection; and
- c. Any other information that the owner wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

C. The owner shall make the information required to be documented and maintained pursuant to subsection A of this section available for review upon a request for inspection by the ~~board~~

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

department or the general public pursuant to the requirements contained in 9VAC5-80-270 or 9VAC5-80-670.

D. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

E. For each project subject to subsection B of this section, the owner shall provide notice of the availability of the information set out in subdivision B 1 of this section to the ~~board~~ department no less than 30 days before beginning actual construction. The notice shall include the location of the information and the name, address and telephone number of the contact from whom the information may be obtained. Should subsequent information become available to the ~~board~~ department to indicate that a given project subject to subsection B of this section is a part of a major modification that resulted in a significant emissions increase, the ~~board~~ department will proceed as if the owner is in violation of 9VAC5-80-1625 A and may institute appropriate enforcement action as provided in subsection A of this section. Nothing in this subsection shall be construed to require the owner of the source to obtain any determination from the ~~board~~ department before beginning actual construction.

**9VAC5-80-2120. Offsets.**

A. Owners shall comply with the offset requirements of this article by obtaining emission reductions from the same source or other sources in the same nonattainment area, except that for ozone precursor pollutants the ~~board~~ department may allow the owner to obtain such emission reductions in another nonattainment area if (i) the other area has an equal or higher nonattainment classification than the area in which the source is located and (ii) emissions from such other area contribute to a violation of the ambient air quality standard in the nonattainment area in which the source is located. By the time a new or modified source begins operation, such emission reductions shall (i) be in effect, (ii) be state and federally enforceable and (iii) assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

B. The (i) ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds or (ii) the ratio of total emission reductions of nitrogen oxides to total increased emissions of nitrogen oxides in ozone nonattainment areas designated in 9VAC5-20-204 shall be at least the following:

1. Nonattainment areas classified as marginal	1.1 to one.
2. Nonattainment areas classified as moderate	1.15 to one.
3. Nonattainment areas classified as serious	1.2 to one.
4. Nonattainment areas classified as severe	1.3 to one.
5. Nonattainment areas with any other classification or no classification	1 to one.

The ratio of total actual emissions reductions of the nonattainment pollutant to the emissions increase shall be at least 1 to one unless an alternative ratio is provided above for the applicable nonattainment area designated in 9VAC5-20-204.

C. Emission reductions otherwise required by these regulations shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by these regulations shall be creditable as emission reductions

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

for such purposes if such emission reductions meet the requirements of subsection A of this section.

D. The ~~board~~ department will allow an owner to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

1. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.
2. The source demonstrates to the satisfaction of the ~~board~~ department that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.
3. The source has obtained a written finding from the U.S. Department of Defense, U.S. Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.
4. The owner will comply with an alternative measure, imposed by the ~~board~~ department, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the ~~board~~ department may impose an emissions fee to be paid to the ~~board~~ department which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that nonattainment area during the previous three years. The ~~board~~ department will utilize the fees in a manner that maximizes the emissions reductions in that nonattainment area.

E. For sources subject to the provisions of this article, the baseline for determining credit for emissions reduction is the emissions limit under the applicable implementation plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area; or
2. The applicable implementation plan does not contain an emissions limitation for that source or source category.

F. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

G. For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the owner of the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The ~~board~~ department will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

H. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally and state enforceable. In addition, the shutdown or curtailment is creditable only if it occurred on or after January 1, 1991.

I. No emissions credit may be allowed for replacing one volatile organic compound with another of lesser reactivity.

J. Where this article does not adequately address a particular issue, the provisions of Appendix S to 40 CFR Part 51 shall be followed to the extent that they do not conflict with this section. The provisions of Appendix S to 40 CFR Part 51 apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

K. Credit for an emissions reduction can be claimed to the extent that the ~~board~~ department has not relied on it in issuing any permit under this chapter or has not relied on it in demonstrating attainment or reasonable further progress.

L. The total tonnage of increased emissions, in tons per year, resulting from a major modification that shall be offset in accordance with § 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

M. In meeting the emissions offset requirements of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this subsection.

1. The offset requirements in this section for direct PM<sub>2.5</sub> emissions or emissions of precursors of PM<sub>2.5</sub> may be satisfied by offsetting reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor identified under subdivision c of the definition of "regulated NSR pollutant" if such offsets comply with the interprecursor trading hierarchy and ratio established for a particular nonattainment area. The ~~board~~ department may allow the offset requirement of this section for direct PM<sub>2.5</sub> emissions or precursors of PM<sub>2.5</sub> to be satisfied by offsetting reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor using a ratio approved by the ~~board~~ department for the nonattainment area after public review and comment as provided in subsections N and O of this section.

2. The offset requirements of this section for emissions of the ozone precursors NO<sub>x</sub> and VOC may be satisfied, where appropriate, by offsetting reductions in actual emissions of either of those precursors if the requirements for such offsets under subdivision 3 of this subsection and all other requirements for such offsets are also satisfied.

3. For any case-specific permit ratio for ozone proposed by a permit applicant to be used for a particular permit, the following information shall be submitted to the ~~board~~ department to support approval of the ratio:

- a. The description of the air quality model used to propose a case-specific ratio;
- b. The proposed ratio for the precursor substitution and accompanying calculations; and
- c. A modeling demonstration showing that such ratios as applied to the proposed project and credit source will provide an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

N. Prior to the decision of the ~~board~~ department, the offsetting ratio will be subject to a public comment period of at least 30 days. The ~~board~~ department will notify the public, by notice on the department webpage "Public Notices for Air Regulations," <sup>1</sup> of the opportunity for public comment

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

on the offsetting ratio and supporting information as available for public inspection under the provisions of subsection O of this section. The notification shall be published at least 30 days prior to the close of the public comment period.

O. Information on the offsetting ratio and supporting information, as well as the preliminary determination of the ~~board~~ department, shall be available for public inspection during the entire public comment period on the department webpage "~~Public Notices for Air Regulations.~~"

**9VAC5-80-2140. Exemptions.**

A. The provisions of this article do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric acid plants;
10. Sulfuric acid plants;
11. Nitric acid plants;
12. Petroleum refineries;
13. Lime plants;
14. Phosphate rock processing plants;
15. Coke oven batteries;
16. Sulfur recovery plants;
17. Carbon black plants (furnace process);
18. Primary lead smelters;
19. Fuel conversion plants;
20. Sintering plants;
21. Secondary metal production plants;
22. Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);
23. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input;
24. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
25. Taconite ore processing plants;
26. Glass fiber processing plants;
27. Charcoal production plants;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

28. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

29. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Parts 60, 61 or 63.

B. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the ~~board~~ department that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

**9VAC5-80-2144. Actuals plantwide applicability limits (PALs).**

A. The ~~board~~ department may approve the use of an actuals PAL for any existing major stationary source (except as provided in subdivision 1 of this subsection) if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

1. No PAL shall be allowed for VOC or NO<sub>x</sub> for any source located in an extreme ozone nonattainment area.

2. Any physical change in or change in the method of operation of a source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

a. Is not a major modification for the PAL pollutant;

b. Does not have to be approved through this article; and

c. Is not subject to the provisions in 9VAC5-80-2000 D (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

3. Except as provided under subdivision 2 c of this subsection, a source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source shall submit the following information to the ~~board~~ department for approval:

1. A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

3. The calculation procedures that the owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

C. The general requirements set forth in this subsection shall apply to the establishment of PALs.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. The ~~board~~ department may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:

- a. The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month rolling average). For each month during the first 11 months from the PAL effective date, the owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.
- b. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.
- c. The PAL permit shall contain all the requirements of subsection F of this section.
- d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant.
- e. Each PAL shall regulate emissions of only one pollutant.
- f. Each PAL shall have a PAL effective period of 10 years.
- g. The owner shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections M, N, and O of this section for each emissions unit under the PAL through the PAL effective period.

2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 9VAC5-80-2120 F through N unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

D. PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures prescribed in the applicable permit programs identified in the definition of PAL permit. In no case may the ~~board~~ department issue a PAL permit unless the ~~board~~ department provides the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The ~~board~~ department will address all material comments before taking final action on the permit.

E. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant or under the federal Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period shall be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period shall be added to the PAL level in an amount equal to the potential to emit of the units. The ~~board~~ department will specify a reduced PAL level (in tons per year) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirements that the ~~board~~ department is aware of prior to issuance of the PAL permit. For instance, if the source owner will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year.
2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).
3. Specification in the PAL permit that if an owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the ~~board~~ department, or until the ~~board~~ department determines that the revised PAL permit will not be issued.
4. A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.
5. A requirement that, once the PAL expires, the source is subject to the requirements of subsection I of this section.
6. The calculation procedures that the owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.
7. A requirement that the owner monitor all emissions units in accordance with the provisions under subsection M of this section.
8. A requirement to retain the records required under subsection N of this section on site. Such records may be retained in an electronic format.
9. A requirement to submit the reports required under subsection O of this section by the required deadlines.
10. Any other requirements that the ~~board~~ department deems necessary to implement and enforce the PAL.

G. The PAL effective period shall be 10 years.

H. The requirements for reopening of a PAL permit set forth in this section shall apply to actuals PALs.

1. During the PAL effective period, the ~~board~~ department will reopen the PAL permit to:
  - a. Correct typographical and calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;
  - b. Reduce the PAL if the owner creates creditable emissions reductions for use as offsets under 9VAC5-80-2120 F through N; and
  - c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.
2. The ~~board~~ department may reopen the PAL permit for any of the following reasons:
  - a. Reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) with compliance dates after the PAL effective date.
  - b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the ~~board~~ department may impose on the major stationary source.
  - c. Reduce the PAL if the ~~board~~ department determines that a reduction is necessary to avoid causing or contributing to a violation of an ambient air quality standard or ambient air increment in 9VAC5-80-1635, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical and calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL which is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the timeframe specified for PAL renewals in subdivision J 2 of this section, the source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the ~~board~~ department) by distributing the PAL allowable emissions for the source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision K 4 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The ~~board~~ department will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the ~~board~~ department determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The ~~board~~ department may approve the use of monitoring systems (such as source testing or emission factors) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the ~~board~~ department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the source will be subject to the nonattainment major NSR requirements if such change meets the definition of "major modification."

5. The owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, or NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9VAC5-80-2000 D, but were eliminated by the PAL in accordance with the provisions in subdivision A 2 c of this section.

J. The requirements for the renewal of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The ~~board~~ department will follow the procedures specified in subsection D of this section in approving any request to renew a PAL, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the ~~board~~ department.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. The owner shall submit a timely application to the ~~board~~ department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued, or until the ~~board~~ department determines that the revised permit with the renewed PAL will not be issued, and a permit is issued pursuant to subsection I of this section.

3. The application to renew a PAL permit shall contain the following information:

- a. The information required in subsection B of this section.
- b. A proposed PAL level.
- c. The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.
- d. Any other information the owner wishes the ~~board~~ department to consider in determining the appropriate level for renewing the PAL.

K. The requirements for the adjustment of the PAL set forth in this subsection shall apply to actuals PALs. In determining whether and how to adjust the PAL, the ~~board~~ department will consider the options outlined in subdivisions 1 and 2 of this subsection. However, in no case may any such adjustment fail to comply with subdivision 3 of this subsection.

1. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the ~~board~~ department may renew the PAL at the same level without considering the factors set forth in subdivision 2 of this subsection; or

2. The ~~board~~ department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the ~~board~~ department in its written rationale.

3. Notwithstanding subdivisions 1 and 2 of this subsection:

- a. If the potential to emit of the source is less than the PAL, the ~~board~~ department will adjust the PAL to a level no greater than the potential to emit of the source; and
- b. The ~~board~~ department will not approve a renewed PAL level higher than the current PAL, unless the source has complied with the provisions for increasing a PAL under subsection L of this section.

4. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the ~~board~~ department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

L. The requirements for increasing a PAL during the PAL effective period set forth in this subsection shall apply to actuals PALs.

1. The ~~board~~ department may increase a PAL emission limitation only if the owner of the major stationary source complies with the following provisions:

- a. The owner shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

contributing to the increase in emissions so as to cause the source's emissions to equal or exceed its PAL.

b. As part of this application, the owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 a of this subsection, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR program process (e.g., LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The ~~board~~ department will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

M. The requirements for monitoring the PAL set forth in this subsection apply to actuals PALs.

1. The general requirements for monitoring a PAL set forth in this subdivision apply to actuals PALs.

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subsection and must be approved by the ~~board~~ department.

c. Notwithstanding subdivision 1 b of this subsection, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the ~~board~~ department.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- d. Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.
2. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 3 through 9 of this subsection:
  - a. Mass balance calculations for activities using coatings or solvents;
  - b. CEMS;
  - c. CPMS or PEMS; and
  - d. Emission factors.
3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
  - a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
  - b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
  - c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the ~~board~~ department determines there is site-specific data or a site-specific monitoring program to support another content within the range.
4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
  - a. CEMS shall comply with applicable performance specifications found in 40 CFR Part 60, appendix B; and
  - b. CEMS shall sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.
5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
  - a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and
  - b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the ~~board~~ department, while the emissions unit is operating.
6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
  - a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
  - b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
  - c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the ~~board~~ department determines that testing is not required.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

7. The owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the ~~board~~ department will, at the time of permit issuance:

- a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or
- b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the ~~board~~ department. Such testing shall occur at least once every five years after issuance of the PAL.

N. The requirements for recordkeeping in the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The PAL permit shall require the owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require an owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

- a. A copy of the PAL permit application and any applications for revisions to the PAL; and
- b. Each annual certification of compliance pursuant to the federal operating permit and the data relied on in certifying the compliance.

O. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the ~~board~~ department in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the ~~board~~ department within 30 days of the end of each reporting period. This report shall contain the following information:

- a. Identification of the owner and the permit number.
- b. Total annual emissions in tons per year based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision N 1 of this section.
- c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.
- d. A list of any emissions units modified or added to the source during the preceding six-month period.
- e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
- f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision M 7 of this section.

g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9VAC5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9VAC5-80-110 F 2 b. The reports shall contain the following information:

- a. Identification of the owner and the permit number;
- b. The PAL requirement that experienced the deviation or that was exceeded;
- c. Emissions resulting from the deviation or the exceedance; and
- d. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the ~~board~~ department the results of any revalidation test or method within three months after completion of such test or method.

P. The ~~board~~ department will not issue a PAL that does not comply with the requirements of this section after September 1, 2006. The ~~board~~ department may supersede any PAL that was established prior to September 1, 2006, with a PAL that complies with the requirements of this section.

**9VAC5-80-2150. Compliance with local zoning requirements.**

No provision of this part or any permit issued thereunder shall relieve an owner of the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the ~~board~~ department of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

**9VAC5-80-2170. Transfer of permits.**

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change.

**9VAC5-80-2180. Permit invalidation, suspension, revocation, and enforcement.**

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction or modification is not commenced within 18 months from the date the permit is granted.



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. A permit granted pursuant to this article shall become invalid if a program of construction or modification is discontinued for a period of 18 months or more or if a program of construction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase shall commence construction within 18 months of the projected and approved commencement date.

C. The ~~board~~ department may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the ~~board~~ department, such extensions may be granted using the procedures for minor amendments in 9VAC5-80-2220.

D. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article, or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the ~~board~~ department may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

F. The ~~board~~ department may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;
4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or
5. Fails to comply with the applicable provisions of this article.

G. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any permit for any of the grounds for revocation contained in subsection F of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part V (9VAC5-170-120 et seq.) of 9VAC5 Chapter 170 and the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia).

J. The ~~board~~ department will notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit or to render a permit invalid.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-80-2195. Actions to combine permit terms and conditions.**

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the ~~board~~ department may take actions to combine permit terms and conditions as provided under subsections B through E of this section.
2. Requests to combine permit terms and conditions may be initiated by the permittee or by the ~~board~~ department.
3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:
  - a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.
  - b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.
  - c. To allow any stationary source or emissions unit to violate any federal requirement.
  - d. To take an action to issue a permit or change a permit for any physical change in or change in the method of operation of a major stationary source that is subject to the provisions in 9VAC5-80-2000 D (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

B. The ~~board~~ department may take actions to combine the terms and conditions of state operating permits and new source review permits, along with any changes to state operating permits and new source review permits.

C. If the ~~board~~ department and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the ~~board~~ department may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the ~~board~~ department may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.
2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.
3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.
4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.
2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.
3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.
4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:
  - a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.
  - b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.
  - c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

**9VAC5-80-2200. Actions to change permits.**

A. The general requirements for actions to make changes to permits issued under this article are as follows:

1. Except as provided in subdivision 3 of this subsection, changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-2210 through 9VAC5-80-2240.
2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department as specified in subsection C of this section.
3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the ~~board~~ department for an administrative permit amendment, a minor permit amendment or

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

a significant permit amendment. The requirements for these permit changes can be found in 9VAC5-80-2210 through 9VAC5-80-2230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-2240.

**9VAC5-80-2210. Administrative permit amendments.**

A. Administrative permit amendments shall be used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity that does not substantially affect the permit.
2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.
3. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-2170 have been fulfilled.

B. The administrative permit amendment procedures are as follows:

1. The ~~board~~ department will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.
2. The ~~board~~ department will incorporate the changes without providing notice to the public under 9VAC5-80-2070. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.
3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**9VAC5-80-2220. Minor permit amendments.**

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement.
2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements.
3. Do not require or change a case-by-case determination of an emissions limitation or other requirement.
4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.
5. Are not required to be processed as a significant amendment under 9VAC5-80-2230 or as an administrative permit amendment under 9VAC5-80-2210.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.
2. Require new or more frequent monitoring or reporting by the permittee.
3. Designate any term or permit condition that meets the criteria in 9VAC5-80-2020 E 1 as state-only enforceable as provided in 9VAC5-80-2020 E 2 for any permit issued under this article or any regulation from which this article is derived.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the ~~board~~ department and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.

D. A request for the use of minor permit amendment procedures shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs, along with a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-2070 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department will do one of the following:

1. Issue the permit amendment as proposed.
2. Deny the permit amendment request.
3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.
2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit amendment.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify if the applicant has submitted a proposed permit amendment. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

**9VAC5-80-2230. Significant amendment procedures.**

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-2220 or as administrative amendments under 9VAC5-80-2210.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Significant amendment procedures shall be used for those permit amendments that meet any of the following criteria:

- a. Involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.
- b. Require or change a case-by-case determination of an emissions limitation or other requirement.
- c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. The provisions of 9VAC5-80-2070 shall apply to requests made under this section.

D. The ~~board~~ department will normally take final action on significant permit amendments within 180 days after receipt of a complete request ~~except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25.~~ The ~~board~~ department may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the ~~board~~ department under subsection D of this section.

**9VAC5-80-2240. Reopening for cause.**

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.
2. The ~~board~~ department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
3. The ~~board~~ department determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the requirements contained in this article.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

**9VAC5-80-2260. Definitions.**

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection D of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. As used in this article, all words and terms not defined in subsection D of this section shall have the meanings given them in 9VAC5-80-60 C, 9VAC5-80-370, 9VAC5-80-810 C, 9VAC5-80-1110 C, 9VAC5-80-1410 C, 9VAC5-80-1615 C, 9VAC5-80-2010 C, 9VAC5-85-30 C, 9VAC5-85-50 C, or 9VAC5-85-70 C, as may apply, unless otherwise required by context.

C. All words and terms not defined in subsection D of this section and not defined as provided in subsection B of this section shall have the meanings given them in 9VAC5-80-5 or 9VAC5-10 (General Definitions), unless otherwise required by context.

D. Terms defined.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for the purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting any additional information.

"Major new source review permit" or "major NSR permit" means a permit that is issued under the major new source review (major NSR) program or a permit that is issued pursuant to the minor new source review (minor NSR) program in which one or more of the provisions have been combined from a permit issued under the major NSR program. A major NSR permit may contain provisions that are subject to the requirements of the minor NSR program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of this part and Part III (9VAC5-85-40 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Minor new source review permit" or "minor NSR permit" means a permit that is issued pursuant to the minor new source review (minor NSR) program in which none of the provisions have been combined from a major NSR permit.

"Permit amendment" means (i) a change to a permit that was issued pursuant to Article 5 (9VAC5-80-800 et seq.), Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), or Article 9 (9VAC5-80-2000 et seq.) of this part; (ii) an administrative change to a permit issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part; or (iii) a change to a permit issued pursuant to Part III (9VAC5-85-40 et seq.) or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Permit modification" means a change, other than an administrative permit amendment, to a permit that was issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or pursuant to Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"State major permit" means a minor NSR permit that is issued for a stationary source having the potential to emit 100 tons per year or more of any air pollutant, considering the state enforceable and federally enforceable permit limits in that permit.

"State operating permit" means a permit issued pursuant to Article 5 (9VAC5-80-800 et seq.) of this part or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Synthetic minor permit" means a permit that is issued under the provisions of Article 5 (9VAC5-80-800 et seq.) or Article 6 (9VAC5-80-1100 et seq.) of this part or Part IV (9VAC5-85-

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) for a stationary source that would otherwise be subject to permit requirements under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) except for state enforceable and federally enforceable permit limits in that permit.

"Title V permit" means a federal operating permit issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Title V general permit" means a general permit issued pursuant to the provisions of 9VAC5-80-120.

"True minor source" means a stationary source that would not be subject to permit requirements under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) even without considering any state enforceable or federally enforceable permit limitations.

**9VAC5-85-40. Prevention of significant deterioration area permit actions.**

The requirements of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 shall apply, with the following exceptions:

1. The terms defined shall have the meaning given to them in this part.
2. The ~~board~~ department, at its discretion, may apply the provisions of 9VAC5-85-55 in lieu of 9VAC5-80-1865 (Actuals plantwide applicability limits (PALs)).

**9VAC5-85-50. Definitions.**

A. For the purpose of applying this part in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in 9VAC5-80-1615 (Definitions), except for the terms defined in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions) or 9VAC5-80-5 (Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Actuals PAL" means (i) for major stationary sources, a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant or (ii) for GHG-only sources, a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit GHGs.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both) and the most stringent of the following:

1. The allowable emissions for any emissions unit as calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit; or
2. An emissions unit's potential to emit.

"Baseline actual emissions for a GHG PAL" means the average rate, in tons per year CO<sub>2</sub>e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner within the 10-year period immediately preceding either the date the owner begins actual construction of the project or the date a



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

complete permit application is received by the ~~board~~ department for a permit required under this part. For any existing electric utility steam generating unit, baseline actual emissions for a GHG PAL means the average rate, in tons per year CO<sub>2</sub>e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner within the five-year period immediately preceding the date the owner begins actual construction of the project, except that the ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal source operation.

1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.
3. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source shall currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.
4. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by subdivisions 2 and 3 of this definition.

"Emissions unit" means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of 9VAC5-85-55, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is or will be newly constructed and that has existed for less than two years from the date such emissions unit first operated, and (ii) an existing emissions unit is any emissions unit that does not meet the definition of a new emissions unit. A replacement unit is an existing emissions unit.

"GHG-only source" means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under the definition of "major stationary source" and the amount of GHGs on a CO<sub>2</sub>e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under the definition of "subject to regulation" at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under 9VAC5-85-55.

"Greenhouse gases" or "GHGs" means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Major emissions unit" means (i) for any major stationary source obtaining a GHG PAL issued on a mass basis, a major emissions unit as defined in 9VAC5-80-1615 C or (ii) for a GHG PAL issued on a CO<sub>2</sub>e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO<sub>2</sub>e basis that would be sufficient for a new source to trigger permitting requirements under the definition of "subject to regulation" at the time the PAL permit is being issued.

"Major stationary source" means a major stationary source that is defined in and subject to Article 8 (9VAC5-80-1605 et seq.) of 9VAC5-80 (Permits for Stationary Sources) and that meets the definition of "subject to regulation."

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Minor source" means any stationary source that does not meet either (i) the definition of "major stationary source" for any pollutant at the time the PAL is issued or (ii) the definition of "subject to regulation."

"Plantwide applicability limitation" or "PAL" means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO<sub>2</sub>e for a CO<sub>2</sub>e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-85-55.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase" as defined in 9VAC5-80-1615 C and the definition of "subject to regulation" of this section, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the major NSR permit, the state operating permit, or the federal operating permit that establishes a PAL for a major stationary source or a GHG-only source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Regulated NSR pollutant" means:

1. Any pollutant for which an ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and NO<sub>x</sub> are precursors for ozone);
2. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act;
3. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act; or
4. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act as defined in the definition of "subject to regulation."
5. Notwithstanding subdivisions 1 through 4 of this definition, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act, or added to the list pursuant to § 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to § 112(b)(3) of the federal Clean Air Act,

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Replacement unit" means an emissions unit for which all the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
3. The replacement does not change the basic design parameters of the process unit.
4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Significant emissions unit" means (i) for a GHG PAL issued on a mass basis, an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit or (ii) for a GHG PAL issued on a CO<sub>2</sub>e basis, any emissions unit that emits or has the potential to emit GHGs on a CO<sub>2</sub>e basis in amounts equal to or greater than the amount that would qualify the unit as small emissions unit, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means (i) for a GHG PAL issued on a mass basis, an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in this section or in the federal Clean Air Act, whichever is lower or (ii) for a GHG PAL issued on a CO<sub>2</sub>e basis, an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO<sub>2</sub>e basis defined as "significant" for the purposes of subdivision 3 of the definition of "subject to regulation" at the time the PAL permit is being issued.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. The following exceptions shall apply:

1. GHGs shall not be subject to regulation except as provided in subdivisions 4 and 5 of this definition and shall not be subject to regulation if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements of 9VAC5-85-55, and complies with the PAL permit containing the GHG PAL. A GHG-only source with a valid CO<sub>2</sub>e-based GHG PAL shall be considered to be a minor source for GHG.
2. For purposes of subdivisions 3, 4, and 5 of this definition, the term "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted, and shall be computed as follows:
  - a. Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98. For purposes of this subdivision, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, byproducts, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).
- b. Sum the resultant value from subdivision a of this subdivision for each gas to compute a tpy CO<sub>2</sub>e.
3. The term "emissions increase" as used in subdivisions 4 and 5 of this definition shall mean that both a significant emissions increase (as calculated using the procedures in 9VAC5-80-1605 G) and a significant net emissions increase (as defined in 9VAC5-80-1615 C) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value in subdivision b of the definition of "significant" in 9VAC5-80-1615 C.
4. Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:
- The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or
  - The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.
5. Beginning July 1, 2011, in addition to the provisions in subdivision 4 of this definition, the pollutant GHGs shall also be subject to regulation:
- At a new stationary source that will emit or have the potential to emit 100,000 tpy CO<sub>2</sub>e; or
  - At an existing stationary source that emits or has the potential to emit 100,000 tpy CO<sub>2</sub>e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

**9VAC5-85-55. Actuals plantwide applicability limits (PALs).**

- A. The following applicability requirements shall apply:
- The ~~board~~ department may approve the use of an actuals PAL for GHGs on either a mass basis or a CO<sub>2</sub>e basis for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.
  - Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:
    - Is not a major modification for the PAL pollutant;
    - Does not have to be approved through Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) or this part;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

c. Is not subject to the provisions of 9VAC5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and

d. Does not make GHGs subject to regulation.

3. Except as provided under subdivision 2 c of this subsection, a major stationary source or a GHG-only source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source or a GHG-only source shall submit the following information to the ~~board~~ department for approval:

1. A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

3. The calculation procedures that the owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision M 1 of this section.

4. As part of a permit application requesting a GHG PAL, the owner of a major stationary source or a GHG-only source shall submit a statement by the owner that clarifies whether the source is an existing major source as defined in the definition of "major stationary source" or a GHG-only source.

C. The ~~board~~ department may establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the following requirements are met. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 9VAC5-80-2120 F through L unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

1. The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO<sub>2</sub>e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

2. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

3. The PAL permit shall contain all the requirements of subsection F of this section.

4. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

5. Each PAL shall regulate emissions of only one pollutant.
6. Each PAL shall have a PAL effective period of 10 years.
7. The owner of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections L, M, and N of this section for each emissions unit under the PAL through the PAL effective period.

D. PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased through the public participation procedures prescribed in the applicable permit programs identified in the definition of "PAL permit." This includes the requirement that the ~~board~~ department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The ~~board~~ department will address all material comments before taking final action on the permit.

E. Setting the 10-year actuals PAL level shall be accomplished as follows:

1. Except as provided in subdivisions 2 and 3 of this subsection, the actuals PAL level on a mass basis for a major stationary source or a GHG-only source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant under the definition of "significant" in 9VAC5-80-1615 C.
2. For newly constructed units, which do not include modifications to existing units, on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subdivision 1 of this subsection, the emissions shall be added to the PAL level in an amount equal to the potential to emit of the units.
3. For a CO<sub>2</sub>e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as significant on a CO<sub>2</sub>e basis for the purposes of subdivision 3 of the definition of "subject to regulation" at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO<sub>2</sub>e-based PAL, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period shall be subtracted from the PAL level. The ~~board~~ department will specify a reduced PAL level (in tons per year CO<sub>2</sub>e) in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the ~~board~~ department is aware of prior to issuance of the PAL permit.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year CO<sub>2</sub>e.
2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).
3. Specification in the PAL permit that if a major stationary source or a GHG-only source owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the ~~board~~ department.
4. A requirement that emission calculations for compliance purposes shall include emissions from startups, shutdowns, and malfunctions.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

5. A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of subdivision I of this section.
  6. The calculation procedures that the major stationary source or GHG-only source owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision M 1 of this section.
  7. A requirement that the GHG-only source owner shall monitor all emissions units in accordance with the provisions under subsection L of this section.
  8. A requirement to retain the records required under subsection M of this section on site. Such records may be retained in an electronic format.
  9. A requirement to submit the reports required under subsection N of this section by the required deadlines.
  10. Any other requirements that the ~~board~~ department deems necessary to implement and enforce the PAL.
  11. A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation as long as the source complies with the PAL.
- G. The PAL effective period shall be 10 years.
- H. The following requirements for reopening the PAL permit shall apply:
1. During the PAL effective period the ~~board~~ department will reopen the PAL permit to:
    - a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;
    - b. Reduce the PAL if the owner creates creditable emissions reductions for use as offsets under 9VAC5-80-2120 F through N; and
    - c. Revise the PAL to reflect an increase in the PAL as provided under subsection K of this section.
  2. The ~~board~~ department may reopen the PAL permit for the following reasons:
    - a. Reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date; and
    - b. Reduce the PAL consistent with any other requirement that is enforceable as a practical matter and that the ~~board~~ department may impose on the major stationary source or GHG-only source.
  3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.
- I. Any PAL that is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:
1. Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:
    - a. Within the time frame specified for PAL renewals in subdivision J 2 of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the ~~board~~ department) by distributing

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision J 5 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The ~~board~~ department will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the ~~board~~ department determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The ~~board~~ department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the ~~board~~ department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the major stationary source or GHG-only source shall be subject to major NSR requirements if such change meets the definition of "major modification" in 9VAC5-80-1615 C.

5. The major stationary source or GHG-only source owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9VAC5-80-1605 C, but were eliminated by the PAL in accordance with the provisions in subdivision A 2 c of this section.

J. PALs shall be renewed as follows:

1. The ~~board~~ department will follow the procedures specified in subsection D of this section in approving any request to renew a PAL for a major stationary source or a GHG-only source and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the ~~board~~ department.

2. A major stationary source or a GHG-only source owner shall submit a timely application to the ~~board~~ department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner of a major stationary source or a GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

3. The application to renew a PAL permit shall contain the following information:

a. The information required in subdivisions B 1, B 2, and B 3 of this section.

b. A proposed PAL level.

c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- d. Any other information the owner wishes the ~~board~~ department to consider in determining the appropriate level for renewing the PAL.
4. In determining whether and how to adjust the PAL, the ~~board~~ department will consider the following options; however, in no case may any such adjustment fail to comply with subdivision 4 c of this subsection:
    - a. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the ~~board~~ department may renew the PAL at the same level without considering the factors set forth in subdivision 4 b of this subsection; or
    - b. The ~~board~~ department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the ~~board~~ department in its written rationale.
    - c. Notwithstanding subdivisions 4 a and 4 b of this subsection (i) if the potential to emit of the major stationary source or GHG-only source is less than the PAL, the ~~board~~ department will adjust the PAL to a level no greater than the potential to emit of the source and (ii) the ~~board~~ department will not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of subsection K of this section.
  5. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the ~~board~~ department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.
- K. A PAL may be increased during the PAL effective period as follows:
1. The ~~board~~ department may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the following provisions:
    - a. The owner of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the GHG-only source's emissions to equal or exceed its PAL.
    - b. As part of this application, the major stationary source or GHG-only source owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.
    - c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 a of this subsection, regardless of the magnitude of the emissions

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- increase resulting from them (that is, no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.
2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
  3. The ~~board~~ department will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.
  4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.
- L. Monitoring requirements for PALs shall be as follows:
1. The following general requirements apply:
    - a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determine plantwide emissions of the PAL pollutant in terms of CO<sub>2</sub>e per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
    - b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subsection and shall be approved by the ~~board~~ department.
    - c. Notwithstanding subdivision 1 b of this subsection, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the ~~board~~ department.
    - d. Failure to use a monitoring system that meets the requirements of this subsection renders the PAL invalid.
  2. The following are acceptable general monitoring approaches when conducted in accordance with the following minimum requirements:
    - a. Mass balance calculations for activities using coatings or solvents;
    - b. CEMS;
    - c. CPMS or PEMS; and
    - d. Emission factors.
  3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
    - a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
    - b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

- c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the ~~board~~ department determines there is site-specific data or a site-specific monitoring program to support another content within the range.
4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
  - a. CEMS shall comply with applicable Performance Specifications found in Appendix B to 40 CFR Part 60; and
  - b. CEMS shall sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.
5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
  - a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and
  - b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the ~~board~~ department, while the emissions unit is operating.
6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
  - a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
  - b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
  - c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the ~~board~~ department determines that testing is not required.
7. A source owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.
8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the ~~board~~ department will, at the time of permit issuance:
  - a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or
  - b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.
9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the ~~board~~ department. Such testing shall occur at least once every five years after issuance of the PAL.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

M. Recordkeeping requirements shall be as follows:

1. The PAL permit shall require the owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.
2. The PAL permit shall require the owner to retain a copy of the following records for the duration of the PAL effective period plus five years:
  - a. A copy of the PAL permit application and any applications for revisions to the PAL; and
  - b. Each annual certification of compliance pursuant to the federal operating permit program and the data relied on in certifying the compliance.

N. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the ~~board~~ department in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the ~~board~~ department within 30 days of the end of each reporting period. This report shall contain the following information:
  - a. The identification of owner and the permit number.
  - b. Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO<sub>2</sub>e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision M 1 of this section.
  - c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.
  - d. A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding six-month period.
  - e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
  - f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision L 7 of this section.
  - g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.
2. The major stationary source or GHG-only source owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9VAC5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 9VAC5-80-110 F 2 b. The reports shall contain the following information:
  - a. The identification of owner and the permit number;
  - b. The PAL requirement that experienced the deviation or that was exceeded;
  - c. Emissions resulting from the deviation or the exceedance; and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

d. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the ~~board~~ department the results of any revalidation test or method within three months after completion of such test or method.

O. The ~~board~~ department will not issue a PAL that does not comply with the requirements of this part after March 13, 2014. The ~~board~~ department may supersede any PAL that was established prior to March 13, 2014, with a PAL that complies with the requirements of this section.

**9VAC5-170-10. Use of terms.**

A. For the purpose of this chapter and subsequent amendments to it, of regulations of the board, or of orders issued by the ~~board~~ department, the words or terms shall have the meanings given them in 9VAC5-170-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in the regulations of the board, terms used shall have the meanings commonly ascribed to them by recognized authorities.

**9VAC5-170-20. Terms defined.**

"Administrative proceeding" means an informal fact finding or formal hearing.

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances that are or may be harmful or injurious to human health, welfare, or safety; to animal or plant life; or to property; or that unreasonably interfere with the enjoyment by the people of life or property.

"Board" means the State Air Pollution Control Board or its designated representative. However, when used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "board" means the Department of Environmental Quality.

"Case decision" means any determination that a named party as a matter of past or present fact, or as a matter of threatened or contemplated private action, either is or is not, or may or may not be (i) in violation of any law or regulations, or (ii) in compliance with any existing requirement for obtaining or retaining a permit or other right or benefit. Case decisions include, but are not limited to, consent orders, consent agreements, orders, special orders, emergency special orders, permits, waivers, and licenses. Case decisions do not include notices of violations, variances, regulations, or inspection reports.

"Confidential information" means secret formulae, secret processes, secret methods, or other trade secrets that are proprietary information certified by the signature of the responsible person for the owner to meet the following criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality, (ii) information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding, (iii) information that is not publicly available from sources other than the owner, and (iv) information the disclosure of which would cause substantial harm to the owner.

"Consent agreement" means an agreement that the owner or another person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

purpose of coming into compliance with the regulations of the board, by mutual agreement of the owner or another person and the ~~board~~ department.

"Consent order" means a consent agreement issued as an order. Consent orders may be issued without a formal hearing.

"Department" means an employee or other representative of the Virginia Department of Environmental Quality as designated by the director.

"Director" means the Director of the Virginia Department of Environmental Quality or a designated representative.

"Disclosure form" means the financial statement required by § 2.2-3114 of the State and Local Government Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia).

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety, or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural, or other reasonable use.

"Emergency special order" means an order of the ~~board~~ department issued under the provisions of § 10.1-1309 B of the Code of Virginia, after declaring a state of emergency and without a formal hearing, to owners who are permitting or causing air pollution to cease the pollution. These orders shall become invalid if a formal hearing is not held within 10 days after the effective date.

"Enabling law" or "enabling laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing the board to make regulations or the department to decide cases or containing procedural requirements therefor, including, but not limited to, the (i) Virginia Air Pollution Control Law and (ii) the Virginia Motor Vehicle Emissions Control Law.

"Evidentiary hearing" means a formal proceeding that provides opportunity for interested persons to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Administrative Process Act in connection with the making of regulations. Evidentiary hearings do not include the informational inquiries of an informal nature provided in § 2.2-4007.01 B of the Administrative Process Act.

"Federal Clean Air Act" means 42 USC 7401 et seq., 91 Stat 685.

"Formal hearing" means a formal proceeding that provides for the right of private parties to submit factual proofs as provided in § 2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 2.2-4019 of the Administrative Process Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 2.2-4019 of the Administrative Process Act.

"Locality" means a city, town, county, or other public body created by or pursuant to state law.

"Order" means a decision or directive of the ~~board~~ department, including special orders, emergency special orders, and other orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of the regulations of the board. Unless specified otherwise in the Virginia Air Pollution Control Law or in the regulations of the board, orders shall be issued only after the appropriate administrative proceeding.

"Owner" means a person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees, and committees, as well as individuals, who owns, leases, operates, controls, or supervises a source.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

"Party" means, for the purposes of Part VIII (9VAC5-170-190 et seq.) of this chapter, a person named in the record who actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or another legal entity.

"Pollutant" means a substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare, or safety; to animal or plant life; or to property; or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential conflict of interest" means a personal interest as defined in § 2.2-3101 of the State and Local Government Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia).

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007.01 B of the Administrative Process Act, held to afford people an opportunity to submit views and data relative to a matter on which a decision of the board or the department is pending.

"Public meeting" means an informal proceeding conducted by the department in conjunction with the notice of intended regulatory action to afford people an opportunity to submit comments relative to intended regulatory actions.

"Public participation process" means any element of a board or department decision making process that involves the use of a public meeting, public hearing, or evidentiary hearing.

"Regulations of the board" means regulations adopted by the State Air Pollution Control Board under a provision of the Code of Virginia.

"Source" means one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft, or other contrivances that contribute, or may contribute, either directly or indirectly to air pollution. An activity by a person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Special order" means an order of the ~~board~~ department issued:

1. Under the provisions of § 10.1-1309 of the Code of Virginia:
  - a. To owners who are permitting or causing air pollution to cease and desist from the pollution;
  - b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the ~~board~~ department, to construct facilities in accordance with or otherwise comply with the approved plan;
  - c. To owners who have violated or failed to comply with the terms and provisions of an order or directive issued by the ~~board~~ department to comply with the terms and provisions;
  - d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and
  - e. To require an owner to comply with the provisions of the Virginia Air Pollution Control Law and a decision of the ~~board~~ department; or

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Under the provisions of § 10.1-1309.1 of the Code of Virginia, which require that an owner file with the ~~board~~ department a plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the environment that is reasonably likely to occur if the source ceases operations.

"Variance" means the temporary exemption of an owner or other person from the regulations of the board, or a temporary change in the regulations of the board as they apply to an owner or other person.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Virginia Register Act" means Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia.

**9VAC5-170-30. Applicability.**

A. The provisions of this chapter, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of this chapter, unless specified otherwise, shall apply in the administration of all regulations of the board to the extent not covered in a specific regulation of the board. In cases where the provisions of this chapter conflict with another regulation of the board, the provisions of the other regulation shall apply.

C. No provision of this chapter shall limit the power of the ~~board~~ department to take appropriate action as necessary to control and abate air pollution in emergency situations.

~~D. By the adoption of this chapter, the board confers upon the department the administrative, enforcement, and decision-making authority articulated in this chapter except as restricted in Part VII (9VAC5-170-180 et seq.) of this chapter.~~

**9VAC5-170-40. Hearings and proceedings.**

A. Four types of proceedings are used in the administration of the ~~board's regulatory program~~ following programs.

1. A public hearing is held in each of two situations, as explained below.

a. A public hearing is required before considering regulations in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 2.2-4007.01 B of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to 9VAC5-5 (Public Participation Guidelines).

b. A public hearing is required before considering variances and amendments to and revocation of variances in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9VAC5-170-140.

2. An informal fact finding is used to negotiate and to make case decisions. The procedure for an informal fact finding shall conform to § 2.2-4019 of the Administrative Process Act.

3. A formal hearing is held in each of two situations.

a. A formal hearing is held for the enforcement or review of orders and permits and for the enforcement of regulations in accordance with § 10.1-1307 D and § 10.1-1322 A of the Virginia Air Pollution Control Law. The procedures for this type of hearing shall



REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

conform to § 2.2-4020 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

b. A formal hearing is held for special orders or emergency special orders for the enforcement or review of orders and permits and for the enforcement of regulations in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for this type of hearing shall conform to § 2.2-4020 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.

4. An evidentiary hearing may be held for the making of regulations. The procedure for this type of hearing shall conform to § 2.2-4009 of the Administrative Process Act.

B. The ~~board~~ department may adopt policies and procedures to supplement the statutory procedural requirements for the various hearings and proceedings cited in ~~subsection A subdivisions A 1 through 3~~ of this section.

C. Records of hearings and proceedings may be kept in one of the following forms:

1. Oral statements or testimony at a public hearing will be stenographically or electronically recorded, and may be transcribed to written form.

2. Oral statements or testimony at an informal fact finding will be stenographically or electronically recorded, and may be transcribed to written form.

3. Formal hearings and evidentiary hearings will be recorded by a court reporter or electronically recorded for transcription to written form.

D. Availability of records of hearings and proceedings shall be as follows:

1. A copy of the electronic recording or the transcript of a public hearing, if transcribed, will be provided within a reasonable time to anyone upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. A copy of the electronic recording or the transcript of an informal fact finding, if transcribed, will be provided within a reasonable time to anyone upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

3. Anyone desiring a copy of the transcript of a formal hearing or evidentiary hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

**9VAC5-170-50. Policy and procedural information and guidance.**

A. The director may adopt detailed policies and procedures which:

1. Request data and information in addition to and in amplification of the provisions of the regulations of the board;

2. Specify the methods and means that may be used to determine compliance with applicable provisions of the regulations of the board;

3. Set forth the format by which all data and information should be submitted; and

4. Set forth how the regulatory programs should be implemented.

B. In cases where the regulations of the board specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing, ~~the owner may request information and guidance concerning the proper procedures and methods, and the director shall furnish in writing such information on a case-by-case basis~~ such phrasing shall be

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

interpreted such as consistent with the Air Pollution Control Law of Virginia, Code of Virginia § 10.1-1300 et seq. The owner may request information and guidance concerning the proper procedures and methods, and the director shall furnish in writing such information on a case-by-case basis.

**9VAC5-170-60. Availability of information.**

A. Emission data in the possession of the ~~board~~ department shall be available to the public without exception.

B. Other records, reports, or information in the possession of the ~~board~~ department shall be available to the public with the following exception. The ~~board~~ department shall consider records, reports, or information confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory to the ~~board~~ department by an owner that records, reports, or information meet the criteria in subsection C of this section and the owner provides a certification to that effect signed by a responsible representative of the owner. Records, reports or information may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.

C. In order to be exempt from disclosure to the public under subsection B of this section, the record, report or information must satisfy the following criteria:

1. Information for which the owner has been taking and will continue to take measures to protect confidentiality;
2. Information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;
3. Information which is not publicly available from sources other than the owner; and
4. Information the disclosure of which would cause substantial harm to the owner.

D. The ~~board~~ department shall have the right to substitute information which is not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. Upon approval of the ~~board~~ department, an owner may substitute information which is not confidential for information claimed as confidential. Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the ~~board~~ department as the information for which the inquiry is made.

E. The responsible representative of the owner who certifies information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.

**9VAC5-170-70. Evaluation of regulation. (Repealed.)**

~~A. Prior to January 1, 2001, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

~~B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter, or (iii) amend this chapter. If the board's~~

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

~~decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

**9VAC5-170-80. Establishment of regulations and orders.**

A. Regulations of the board shall be adopted, amended or repealed in accordance with the provisions of the enabling laws, Articles 1 (§ 2.2-4000 et seq.) and 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, and 9VAC5-5 (Public Participation Guidelines).

B. Regulations, amendments, and repeals shall become effective as provided in § 2.2-4015 of the Administrative Process Act.

C. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under § 2.2-4011 of the Administrative Process Act, but the regulation shall remain effective no longer than one year unless readopted following the requirements of subsection A of this section. The provisions of this subsection are not applicable to emergency special orders of the ~~board~~ department; these orders are subject to the provisions of subsection E of this section.

D. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout the regulations of the board, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on specific documents which have been incorporated by reference and on the availability of these documents may be found in the specific regulations of the board which incorporate the documents.

E. Orders, special orders, and emergency special orders may be issued pursuant to § 10.1-1307 D, § 10.1-1309, or § 10.1-1309.1 of the Virginia Air Pollution Control Law.

**9VAC5-170-120. Enforcement of regulations, permits, and orders.**

A. As provided in § 10.1-1186(10) of the Code of Virginia, the director has independent authority to compel compliance with the Virginia Air Pollution Control Law, regulations of the board, permits, certifications, and case decisions. However, whenever the director has reason to believe that a violation of any provision of the regulations of the board or a permit or order has occurred, he may serve notice on the suspected violator ~~on behalf of the board~~, citing the applicable provision of the regulations of the board, permit, or order and the facts on which the suspected violation is based. ~~When acting on behalf of the board, the~~ The director may obtain compliance through one of the enforcement proceedings provided in subdivisions 1 and 2 of this subsection. ~~Thus, the director may act on his own independent authority or on the authority of the board as delegated to him by this chapter.~~

1. The director may obtain compliance through administrative means. These means may be a variance, order, special order, control program, consent agreement, or another mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance.
2. The director may obtain compliance through legal means pursuant to § 10.1-1307.3, § 10.1-1316, or § 10.1-1320 of the Virginia Air Pollution Control Law.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

B. Nothing in this section shall prevent the director from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.

C. Orders, consent orders, delayed compliance orders, special orders, and emergency special orders are considered administrative means, and the ~~board~~ department reserves the right to use these means in lieu of or to provide a legal basis for the enforcement of administrative means approved by the director under subsection A of this section.

D. Case decisions regarding the enforcement of regulations, orders, and permits shall be made by the director ~~or board~~. Case decisions of the director that are made pursuant to a formal hearing (i) may be regarded as a final decision ~~of the board~~ and appealed pursuant to 9VAC5-170-200 D ~~or (ii) may be directly considered by the board as provided in 9VAC5-170-200 G~~, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the director that are made pursuant to an informal fact finding (i) may be appealed ~~to the board pursuant to 9VAC5-170-200 A or (ii) may be directly considered by the board according to 9VAC5-170-200 G~~.

**9VAC5-170-130. Right of entry.**

A. Whenever it is necessary for the purposes of the regulations of the board, the ~~board~~ department or an agent authorized by the ~~board~~ department may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10.1-1315 or § 46.2-1187.1 of the Code of Virginia.

B. Upon the procurement of an inspection warrant signed by a judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered, the ~~board~~ department or an agent authorized by the ~~board~~ department may enter any property or premises and conduct any inspection, testing, or collection of samples for testing required or authorized by state law or regulation in connection with the manufacturing, emitting, or presence of a toxic substance, as authorized by § 19.2-393 et seq. of the Code of Virginia.

Part VI

Board Actions Variances, Ordinances, and Approvals

**9VAC5-170-140. Variances.**

Part VI

Board Actions Variances, Ordinances, and Approvals

A. Pursuant to § 10.1-1307 C of the Virginia Air Pollution Control Law, the ~~board~~ department may ~~in its discretion~~ grant local variances to a provision of the regulations of the board after an investigation and public hearing; except that no local variances shall be granted from regulations adopted by the board pursuant to § 10.1-1308 of the Code of Virginia related to the requirements of subsection E of § 10.1-1308 of the Code of Virginia or Articles 4 (§ 10.1-1329 et seq.) of the Code of Virginia. If a local variance is appropriate, the ~~board~~ department shall issue an order to this effect. The order shall be subject to amendment or revocation at any time.

B. The ~~board~~ department shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the affected area of the subject, date, time, and place of the public hearing at least 30 days prior to the scheduled hearing.

C. The public participation procedures of § 10.1-1307.01 of the Virginia Air Pollution Control Law shall be followed in the consideration of variances.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

D. Notwithstanding the requirements of subsection B of this section, if the ~~board~~ department finds that there is a locality particularly affected by a variance involving (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:
  - a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request board consideration~~ as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and
  - b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~
2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.
3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit, unless the ~~board votes~~ director chooses to shorten the period.

**9VAC5-170-150. Local ordinances.**

A. Local ordinances shall be established and approved as follows:

1. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution shall first obtain the approval of the ~~board~~ department as to the provisions of the ordinance or amendment. Except for an ordinance or amendment pertaining solely to open burning, the ~~board~~ department shall not approve an ordinance or amendment which regulates an emission source that is required to register with the ~~board~~ department or to obtain a permit pursuant to Virginia Air Pollution Control Law and the regulations of the board. The ~~board~~ department in approving local ordinances will consider, but will not be limited to, the following criteria:
  - a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.
  - b. Adequate local resources will be committed to enforcing the proposed local ordinance.
  - c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

2. Approval of a local ordinance shall be withdrawn if the ~~board~~ department determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, the local amendment will be made within six months. If the necessary amendment is not made within six months, the ~~board~~ department may rescind its approval of the ordinance.

B. Local ordinances shall provide for reporting information required by the ~~board~~ department to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Reports shall include, but are not limited to monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings, and status of control programs and permits.

C. Local ordinances are a supplement to state regulations. Provisions of local ordinances which have been approved by the ~~board~~ department and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the ~~board~~ department to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The ~~board~~ department will also provide technical and other assistance to local authorities in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The ~~board~~ department emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the ~~board~~ department reserves the right to enforce state regulations.

D. A local governing body may grant a variance to a provision of its air pollution control ordinance provided that:

1. A public hearing is held by the locality prior to granting the variance;

2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation in the affected locality and a major newspaper of general circulation in the state capital area at least 30 days prior to the date of the public hearing by the locality; and

3. The variance does not permit an owner or other person to take action that would result in a violation of a provision of state regulations unless a variance is granted by the ~~board~~ department. The local public hearing required for the variances to the local ordinance and the public hearing required under state regulations may be conducted jointly as one proceeding.

E. This section shall not apply to the approval of local ordinances concerning open burning established pursuant to 9VAC5-40-5640 D.

**9VAC5-170-160. Conditions on approvals.**

A. The ~~board~~ department may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the ~~board~~ department in this regard. If the owner or other person fails to adhere to the conditions, the ~~board~~ department may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.

B. An owner may consider a condition imposed by the ~~board~~ department as a denial of the requested approval or permit, which shall entitle the applicant to appeal the decision of the ~~board~~ department pursuant to 9VAC5-170-200.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

**9VAC5-170-170. Considerations for approval actions.**

Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board, in making regulations and the department in approving variances, control programs, or permits, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located, except that consideration of this factor shall be satisfied if the local governing body of a locality in which a facility or activity is proposed has resolved that the location and operation of the proposed facility or activity is suitable to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from the activity.

Part VII

Delegation of Authority

**9VAC5-170-180. General provisions. (Repealed.)**

~~A. In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the board confers upon the director the administrative, enforcement, and decision-making powers as are set forth in this part. The board reserves the right to exercise its authority in any of the following delegated powers should it choose to do so, except as limited by §§ 10.1-1322 and 10.1-1322.01 of the Code of Virginia.~~

~~B. The director is delegated the authority to act within the scope of the Virginia Air Pollution Control Law and the regulations of the board and for the board when it is not in session except for the authority to:~~

- ~~1. Control and regulate the internal affairs of the board;~~
- ~~2. Approve proposed regulations for public comment and adopt final regulations;~~
- ~~3. Grant variances to regulations;~~
- ~~4. Approve amendments to a policy or procedure approved by the board except as may be otherwise provided;~~
- ~~5. Appoint people to the State Advisory Board on Air Pollution;~~
- ~~6. Create local air pollution control districts and appoint representatives; and~~
- ~~7. Approve local ordinances except those that pertain solely to open burning.~~

Part VIII

Appeal of Board Department Actions

**9VAC5-170-190. General provisions.**

A. Except as provided in subsections B and C of this section, this part applies to the appeal of case decisions and other actions or inactions of the board department.

B. The provisions of this part do not apply to the appeal of the promulgation of regulations or variances. Appeals of the promulgation of regulations and variances shall be pursued under Article 4 (§ 2.2-4026 et seq.) of the Administrative Process Act.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-80, 85, -170)

C. The provisions of this part do not apply to permit actions subject to Part I (9VAC5-80-5 et seq.) of 9VAC5-80 with respect to any party except the named party.

**9VAC5-170-200. Appeal procedures.**

A. An owner or other party significantly affected by an action of the ~~board~~ department taken without a formal hearing, or by inaction of the ~~board~~ department, may request a formal hearing in accordance with § 2.2-4020 of the Administrative Process Act, provided a petition requesting a formal hearing is filed with the ~~board~~ department. In cases involving actions of the ~~board~~ department, the petition shall be filed within 30 days after notice of the action is mailed, by postal or electronic delivery, or delivered to the owner or party requesting notification of the action.

B. Prior to a formal hearing, an informal fact finding shall be held pursuant to § 2.2-4019 of the Administrative Process Act unless waived by the named party and the ~~board~~ department.

C. A decision of the ~~board~~ department resulting from a formal hearing shall constitute the final decision of the ~~board~~ department.

D. Judicial review of a final decision of the ~~board~~ department shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 2.2-4026 of the Administrative Process Act.

E. Nothing in this section shall prevent disposition of a case by consent.

F. A petition for a formal hearing or a notice or petition for an appeal by itself shall not constitute a stay of decision or action. A stay of decision shall be sought through appropriate legal channels.

~~G. A party significantly affected by a decision of the director may request that the board exercise its authority for direct consideration of the issue. The request shall be filed within 30 days after the decision is rendered and shall contain reasons for the request.~~

~~H. The submittal of the request by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.~~

~~I. The director has final authority to adjudicate contested decisions of subordinates delegated powers by the director prior to appeal of decisions to the circuit court or consideration by the board.~~

**9VAC5-170-210. General.**

A. Pursuant to § 128(a)(2) of the federal Clean Air Act, ~~the board and~~ the director, in their his capacity of approving permits or enforcement orders, shall adequately disclose any potential conflicts of interest. Such disclosure shall be made annually through the applicable disclosure forms set forth in § 2.2-3117 or 2.2-3118 of the State and Local Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia) as required in § 2.2-3114 of the State and Local Conflict of Interests Act. All terms used in the disclosure forms shall have the meaning as set forth in the State and Local Conflict of Interests Act.

B. Conduct concerning personal interest in transactions shall be governed by § 2.2-3112 of the State and Local Conflict of Interests Act. All terms used regarding personal interest in transactions shall have the meaning as set forth in the State and Local Conflict of Interests Act.