

---

# PROPOSED REGULATIONS

---

For information concerning Proposed Regulations, see Information Page.

---

## Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.  
Language which has been stricken indicates proposed text for deletion.

---

## STATE AIR POLLUTION CONTROL BOARD

Title of Regulations: **Regulations for the Control and Abatement of Air Pollution (Rev. G00).**

**9 VAC 5-40. Existing Stationary Sources (repealing 9 VAC 5-40-160 through 9 VAC 5-40-230).**

**9 VAC 5-50. New and Modified Stationary Sources (repealing 9 VAC 5-50-160 through 9 VAC 5-50-230).**

**9 VAC 5-60. Hazardous Air Pollutants (adding 9 VAC 5-60-200 through 9 VAC 5-60-270 and 9 VAC 5-60-300 through 9 VAC 5-60-370).**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Date: December 7, 2001 - 9 a.m.

Public comments may be submitted until 4:30 p.m. on December 24, 2001.

(See Calendar of Events section for additional information)

Agency Contact: Dr. Kathleen Sands, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4413, FAX (804) 698-4510, or e-mail krsands@deq.state.va.us.

Basis: Section 10.1-1308 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.

Purpose: The purpose of the regulations is to require source owners to limit emissions of toxic pollutants to a level that will not produce ambient air concentrations that may cause or contribute to the endangerment of human health. The proposed amendments are being made (i) to reduce the regulatory burden of the state's toxic pollutant program on industry in order to ensure that the state's enforcement resources are used in the manner best suited to protecting public health and welfare; and (ii) to render the state toxic pollutant program consistent with the federal Clean Air Act, according to a determination made pursuant to the review of existing regulations mandated by Executive Order 15(94).

### Substance:

1. The list of toxic air pollutants covered by the regulations is limited to the 188 substances regulated under §112 of the federal Clean Air Act. This has been Virginia's policy and practice at least since 1991, but that practice has not been clearly articulated in the regulation.

2. Those source categories that are subject to an emission standard under § 112 of the federal Clean Air Act or that have been determined by the EPA to require no regulation are exempted from applicability. Under the current rules, sources must comply with both federal and state regulations. If, therefore, the state rules were to require a more stringent control of emissions than that required by the federal

maximum achievable control technology standard (MACT), the source would have to comply with the MACT and perform whatever additional actions were necessary to bring the source into compliance with the state standard. Under the new rules, sources need only comply with one set of regulations, either federal or state, not both.

### Issues:

Public: The proposed regulatory action will have three primary advantages for the public. First, although the cost of compliance with the amended regulations will initially be the same as the cost of compliance with the current regulations, as more federal MACT standards are promulgated, sources will be eliminated from applicability, thus reducing sources' compliance costs as well as the indirect costs to the taxpayer. Second, because the relationship between the state and federal programs will be clarified and the two programs will no longer overlap, the compliance burden on sources will be reduced. Third, the environmental community will be assured that the state program will provide adequate protection for public health until the federal program is fully implemented. The proposed regulatory action will have no disadvantages for the public.

Department: The primary advantage to the department and the Commonwealth will be the reduction of enforcement costs. Because the amended regulations will be clearer and easier to comply with than the current regulations, and because the relationship between the state and federal programs will be clarified, sources will comply more readily. Thus, enforcement costs will be reduced, allowing the department to divert scarce resources to other areas. The proposed regulatory action will have no disadvantages for the department or the Commonwealth.

Localities Particularly Affected: There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Public Participation: The department is seeking comment on the proposed regulation and the costs and benefits of the proposal. The department is also seeking comment on the impacts of the proposed regulation on farm and forest lands.

### Department of Planning and Budget's Economic Impact

Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007 G of the Administrative Process Act and Executive Order Number 25 (98). Section 2.2-4007 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with

the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. The toxic pollutant emissions sources that are subject to or exempted from federal regulations will no longer be required to comply with the state regulations. In addition, the proposed changes will clarify that the toxic pollutants subject to these regulations are those listed in the federal Clean Air Act.

Estimated economic impact. Hazardous air pollutants, also known as toxic air pollutants from new, modified, or existing stationary sources are regulated under the current regulations. These pollutants may exist as particulate matter or as gases, and include metals, other particles, gases absorbed onto particles, and vapors from fuels and other sources. Examples of toxic air pollutants include benzene, which is found in gasoline; perchlorethylene, which is emitted from some dry cleaning facilities; and methylene chloride, which is used as a solvent and paint stripper by a number of industries. Toxic pollutants may originate from natural sources such as the radon gas coming up from the ground or from the manmade sources. Most air toxics originate from manmade mobile, indoor, and stationary sources. Stationary sources include chemical plants, steel mills, oil refineries, power plants, and hazardous waste incinerators. These sources may release air toxics from equipment leaks, during transfer of materials from one location to another, or during discharge through emission stacks or vents. The Department of Environmental Quality (the agency) indicates that the Commonwealth has significant air emissions of hazardous air pollutants. In 1999, Virginia was ranked 22nd in the nation for total releases of toxic chemicals; 75% of those releases were into the air.

The emissions of toxic substances into the air can be damaging to human health and to the environment. Human exposure to these toxics at sufficient concentrations and durations can result in increased chance of getting cancer, poisoning, and rapid onset of sickness, such as nausea or difficulty in breathing. Other less measurable effects include immunological, neurological, reproductive, and developmental problems. Pollutants deposited onto soil or into lakes and streams where they are taken up by plants and ingested by animals affect ecological systems and eventually human health through consumption of contaminated food.

State and federal regulatory approaches to toxic pollutants have evolved in two distinct periods. Between 1970 and 1990, the Environmental Protection Agency (EPA) provided a framework for protecting people and the environment from the harmful effects of toxic pollutants through establishing risk-based standards. According to the agency, the decision-making process was slow and only a limited number of national emission standards were promulgated. The process was lengthy, involving a determination of a critical level that triggered significant health effects, followed by a determination of those industry categories that contributed the highest emission level of the hazardous air pollutants under review. Concurrent with the slow progress of the federal assessment of toxic pollutants, a series of significant chemical accidents occurred worldwide, including the kepone incident

that took place in Hopewell, Virginia 25 years ago. These circumstances led the State Air Pollution Control Board and policy-making groups in many other states to develop state-specific regulations for toxic pollutants. The states wanted a more expeditious process to assess and regulate hazardous pollutants than that used at the federal level. Many states, including Virginia, used occupational standards and extrapolated them for use in the ambient air. In short, the lack of confidence in federal regulations led to the development of the state regulations to address the toxic pollutants. However, the agency believes that since 1990, EPA has made significant improvements in the federal regulations concerning toxic air pollutants.

According to the agency, by the late 1980s, the federal government realized that its approach to the evaluation and regulation of toxics was not addressing the problem quickly enough. Instead of taking the health-based approach, the 1990 Clean Air Act accelerated the process. First, it established a list of 188 critical hazardous air pollutants. Then, directed EPA to first use a technology-based approach to significantly reduce emissions of air toxics from major sources of air pollution, and then use a risk-based approach to address any remaining, or residual health risks. Under the technology-based approach, EPA sets source categories and standards to control the emissions of air toxics. These rules, known as maximum achievable control technology (MACT) standards, are based on emissions levels that are already being achieved by the better-controlled and lower-emitting sources in an industry. EPA issued 45 air toxics rules to date, which cover many major industrial sources, such as chemical plants, oil refineries, aerospace manufacturers, and steel mills, as well as categories of smaller sources, such as dry cleaners, commercial sterilizers, and secondary lead smelters. Unlike other rules, there are no emission limits in MACT standard itself. However, the rules do provide significant ambient air concentration guidelines as a mechanism for EPA to require the source, on a case-by-case basis, to reduce emissions after analysis and review.

The proposed amendments will provide an exemption from state regulations for those sources that are subject to or exempt from the federal hazardous air pollutant standards. Under the current rules, sources must comply with both federal and state regulations. Thus, the sources have to comply with the MACT rules and perform additional actions necessary to bring the source into compliance with the state regulations. Under the proposed amendments, the sources that are subject to an emission standard under §112 of the federal Clean Air Act or that have been determined by EPA to require no regulation will be exempted from applicability of the state regulations. Thus, the sources will comply with only one set of regulations, either federal or state, but not both. During the development and evaluation of the federal MACT standards, the state program will remain in effect, but more sources will be exempt gradually as federal toxic rules are developed. The proposed amendments will phase out the applicability of the state air toxics program to the sources as they become regulated under the rapidly maturing federal program.

The proposed amendments are expected to produce various cost savings. A significant source of the cost savings is the

reduced number of reviews for toxics. The agency currently issues new source review (NSR) permits and permit modifications to an average of 866 sources annually.<sup>1</sup> Of these 866 sources, approximately 300 major sources have toxics conditions written into their permits, and about 88 sources receive a toxics review as part of their evaluation each year. Each review requires about 40 to 80 hours of time on the part of the agency permit writer and costs the state about \$1,040 to \$2,080 per source.<sup>2</sup> Under the proposed amendments, approximately two-thirds of these sources might be either subject to a federal MACT standard or exempt from regulation by the federal government. In both cases, these sources would be exempt from the revised state toxics program. This would save the state the staffing needs for about 59 toxics reviews annually, or about \$61,383 to \$122,767. The current staff assigned to these duties is expected to be utilized in other tasks.

Of the 88 sources that get a toxics review, about nine sources may also require approximately 8 to 16 hours of research on the part of an environmental specialist at the agency to assess the risks through technical research and consulting. This research generally costs the state \$208 to \$416 per source.<sup>3</sup> Under the proposed revised state toxics program, about nine sources would probably be subject to a federal MACT standard and therefore exempt from the state program. This is expected to save the agency about \$1,872 to \$3,745 in risk assessment costs annually.

About four of the 88 sources that get a toxics review annually are required to have toxics modeling done. The toxic modeling uses a computer to estimate concentrations of pollutant emissions in specific geographic areas. These four sources that require modeling are expected to be subject to federal MACT standards. The federal regulations do not require modeling. Thus, all of the modeling costs are expected to be saved. The modeling usually costs \$20,000 to \$50,000 per source. The agency has the obligation to do the modeling but the source may choose to undertake this task. About half of these sources choose to hire consultants to do the modeling; for the other half, the agency does it. The annual total cost savings is expected to be about \$80,000 to \$200,000 for the regulated community and for the state together.

There are other expected cost savings from permit modifications. The agency's permit application procedures look back at historical emissions changes in addition to the emissions changes directly resulting from the physical or operational change to determine applicability. For sources with fully permitted facilities, applying for a modification means organizing and verifying information already set out in the permits in effect for the source. This effort is time-

consuming and costs the source approximately \$4,200.<sup>4</sup> Under the proposed revised state toxics program, it is expected that all of these amendment costs would be eliminated for approximately 22 sources that receive permit amendments annually because MACT sources will be subject to the federal program. This is expected to save the regulated community approximately \$92,400 annually.

The agency does not expect any increases in health risks. According to the agency, the proposed changes should not directly produce an increase in the number of sources and an increase in the types and quantity of pollutants emitted. However, expected cost savings are likely to promote business activities of regulated toxics sources as they will be able to offer slightly cheaper services or products.<sup>5</sup> This may indirectly cause a very small increase in the quantity of regulated pollutants emitted.

It is also proposed to reduce the number of regulated pollutants to those regulated under the federal program. The list of toxic air pollutants covered by the regulations will be limited to the 188 substances regulated under §112 of the Clean Air Act. According to the agency, this has been Virginia's policy and practice at least since 1991, but that practice has not been articulated in the regulation. The policy required focus on a number of important chemicals. Prior to 1991 the policy required regulation of 364 pollutants included in American Conference of Government Industrial Hygienists. In 1991, the policy was revised to focus on 188 pollutants listed in §112. The agency has not been enforcing regulations for the other pollutants not listed in §112 since then. This was because emission levels were too low, there was not enough staff, the agency did not have emissions factors for many pollutants, and output emissions contained many different toxics making them difficult to regulate. The proposed changes incorporate the current practice into regulations. Since there will be no change in practice, this proposed amendment is not expected to have a significant economic impact.

In addition, the amended regulations are expected to be clearer than the current regulations. The proposed clarifications include that the owner should originate the request for exemption, that the outdoor applications of pesticide are exempt from regulations, and that the fugitive emissions should be included in determining a source's potential to emit. These clarifications are expected to help the enforcement staff at the agency and the regulants.

Businesses and entities affected. Approximately 300 toxics pollutant sources may be subject to this proposal and about 59 sources may be affected annually.

Localities particularly affected. The proposed regulations apply throughout the Commonwealth.

Projected impact on employment. The proposed changes are likely to reduce staffing needs of the agency and the toxics

---

<sup>1</sup> This figure is derived from agency's Comprehensive Environmental Database System. Several members of the agency engineering staff provided other estimates in this analysis.

<sup>2</sup> The cost for a permit writer is estimated for a salaried classified employee earning about \$38,645 annually. The hourly cost of this employee's time is \$26.

<sup>3</sup> The cost for an environmental specialist is estimated for a salaried classified employee earning about \$46,183 annually. The hourly cost of this employee's time is \$31.

---

<sup>4</sup> The Agency

<sup>5</sup> Personal conversations with Tom Knauer, a representative for the Virginia Manufacturers Association, indicated that such increases in production are likely to be insignificant.

consultants combined by about two full-time positions. Some of the savings in staffing needs are likely to accrue to the agency and are likely to be utilized in other tasks. On the other hand, lower costs associated with toxic pollutants may stimulate business activities of regulated sources and increase labor demand by a small margin. Thus, the net effect of the proposed changes on employment cannot be determined.

Effects on the use and value of private property. To the extent that the reduced costs to the regulated sources improve profits, a small increase in the value of toxic sources is expected.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

*The rules establish emission standards consisting of control technology and other requirements that limit source emissions of toxic pollutants to a level that will not produce ambient air concentrations that may cause or contribute to the endangerment of human health. Unlike other rules, there are no definitive emission limits in the emission standard itself. However, the rules do provide significant ambient air concentration guidelines as a mechanism for the agency to require the owner, on a case-by-case basis, to reduce emissions after analysis and review by the department.*

*This regulatory action amends the current state toxic pollutant rules to (i) reduce the number of regulated pollutants to those regulated under the federal program and (ii) exempt from applicability those sources that are subject to a federal hazardous air pollutant standard. This action will integrate the state's program more logically with the federal Clean Air Act and transfers the standards from 9 VAC 5-40 and 9 VAC 5-50 into 9 VAC 5-60.*

Article 3 4.

Emission Standards for Toxic Pollutants from Existing Sources (Rule 4-3 6-4).

~~9 VAC 5-40-160~~ **9 VAC 5-60-200. Applicability and designation of affected facility.**

A. ~~Regardless of the provisions of 9 VAC 5-40-10 and~~ Except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each ~~facility or operation~~ stationary source that emits or may emit any toxic pollutant and which is not subject to Article 3 5 (~~9 VAC 5-50-160~~ 9 VAC 5-60-300 et seq.) of ~~9 VAC 5 Chapter 50~~ 60. Implementation of this article shall occur upon notification to the owner by the board through means such as an information request from the board or an operating permit review under ~~9 VAC 5-80-40~~ Article 5 (9 VAC 5-80) of Part II of Chapter 80.

B. ~~The board may establish the priorities for implementation of this article by either affected facility type or pollutant type. The priorities may be established in consideration of the following factors: potential public health impact, nature and amount of pollutants emitted on a statewide basis, degree of~~

~~regulation by other governmental entities, and available resources. The board, at the request of an owner or owners, may defer implementation of this article for a facility or any group of facilities where technical issues necessitate further analysis and study in order to implement the article or the affected facility or facilities. The board may prescribe the procedures for the prioritization of implementation of this article and for the deferral of implementation of this article by policy.~~

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

~~D. Exemption determination.~~ C. This article shall not apply to the following:

1. ~~Exempted from the provisions of this article is any A stationary source or operation not part of a stationary source which that has a potential to emit a toxic pollutant with a TLV@ at a level equal to or less than the exempt exemption emission rate calculated using the following exemption formulas set forth below for the applicable TLV@.~~ If more than one exemption formula applies to a toxic pollutant emitted by a source, the potential to emit for that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be ~~exempt exempted~~ for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV@ has been established.

a. For toxic pollutants with a TLV-C@, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C@} (\text{mg/m}^3) \times 0.033$$

b. For toxic pollutants with both a TLV-STEL@ and a TLV-TWA@, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-STEL@} (\text{mg/m}^3) \times 0.033$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA@} (\text{mg/m}^3) \times 0.145$$

c. For toxic pollutants with only a TLV-TWA@, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-TWA@} (\text{mg/m}^3) \times 0.066$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA@} (\text{mg/m}^3) \times 0.145$$

2. ~~Exemption from the provisions of this article for any stationary source or operation not part of A stationary source which that has a potential to emit any a toxic pollutant without a TLV@ shall be determined by the board if, upon the owner's request, the board determines to exempt that toxic pollutant from the provisions of this article using available health effects information.~~

3. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in ~~9 VAC 5-40-200~~ 9 VAC 5-60-240.

~~E. Exemptions for toxic pollutants otherwise regulated.~~

~~1. Owners of sources emitting toxic pollutants regulated under any of the following may apply to the board for an exemption from this article:~~

~~a. Hazardous air pollutants regulated under § 112 of the Federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to emission standards in Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.~~

~~b. Designated pollutants regulated under § 111(d) of the federal Clean Air Act, except to the extent such pollutants are emitted from facilities which are not subject to other emission standards in this chapter.~~

~~c. Substances regulated under the Virginia Hazardous Waste Management (HWM) Regulations, 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) which are disposed of in an incinerator as defined by these regulations that (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.), and (ii) has received an HWM permit or qualified for interim status in accordance with 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). The board shall be furnished with an acceptable certification that such incinerator is in compliance with the standards of its HWM permit or interim status and applicable provisions of 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). Facilities which burn hazardous waste for energy recovery are not exempt from this article.~~

~~2. Exemptions for these pollutants shall be granted provided the regulation of the toxic pollutant listed is based on an assessment of health effects and not solely on control technology considerations.~~

~~3. A stationary source subject to an emission standard or other requirement set forth in Article 2 (9 VAC 5-60-10 et seq.) of this part. If less than all of the stationary source is regulated by such an emission standard or other requirement, then only that part of the stationary source regulated by the emission standard or other requirement is exempted.~~

~~4. A stationary source in a source category that is regulated by an emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act and subject to the source category schedule for standards. If less than all of the stationary source is in a source category that is regulated by such an emission standard or other requirement, then only that part of the stationary source in the source category regulated by the emission standard or other requirement is exempted.~~

~~5. A stationary source in a source category for which the U.S. Environmental Protection Agency has made a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act and has published the determination in the source category schedule for standards.~~

6. A boiler, incinerator, or industrial furnace as defined in 9 VAC 20-60-10 and subject to 9 VAC 20-60, provided it (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20-60, and (ii) has received a permit or has qualified for interim status in accordance with 9 VAC 20-60. The board shall be furnished with an acceptable certification that such boiler, incinerator, or industrial furnace is in compliance with the standards of its permit or interim status and applicable provision of 9 VAC 20-60. Facilities that burn hazardous waste for energy recovery are not exempted from this article.

7. A generator or boiler that burns only natural gas, #2 fuel oil, #4 fuel oil, #6 fuel oil, propane, or kerosene.

F. D. Provisions of this article do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

G. E. With regard to the application of pesticides, the provisions of this article shall apply only to the air quality impact from emissions from application inside the premises of the following affected facilities:

1. Industrial and manufacturing operations, including warehouse and storage operations related to the operation of these facilities.

2. Warehouse and storage operations at transportation terminals.

*The provisions of this article shall not apply to the air quality impact from emissions from the application of any pesticide outside.*

H. F. No provision of this article shall limit the power of the board to apply the provisions of this article to any affected facility in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

~~9 VAC 5-40-170~~ 9 VAC 5-60-210. **Definitions.**

A. For the purpose of ~~these~~ the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, 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 here shall have the meanings given them in 9VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

~~"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each toxic pollutant which the board, 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. If the board 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 of them 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 which achieve equivalent results.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed for eliminating emissions from the structure.

"Pesticide" means the same as the definition given in § 3.1-249.27 of the Virginia Pesticide Control Act.

"Potential to emit" means an emission rate based on the maximum capacity of a stationary source to emit a toxic pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a toxic 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 or federally enforceable. *Fugitive emissions shall be included in determining a stationary source's potential to emit.*

"Significant ambient air concentration" means the concentration of a toxic pollutant in the ambient air that if exceeded may have the potential to injure human health.

"Source category schedule for standards" means the schedule issued pursuant to § 112(e) for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 66 FR 8220, January 30, 2001.

"Threshold limit value (TLV®)" means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see 9 VAC 5-20-21). The TLV® is divided into three categories: TLV-Time-Weighted Average® (TLV-TWA®), TLV-Short-Term Exposure Limit® (TLV-STEL®), and TLV-Ceiling® (TLV-C®).

"TLV-TWA®" means the time-weighted average concentration for a normal eight-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

"TLV-STEL®" means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The TLV-STEL® supplements the TLV-TWA®

where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

"TLV-C®" means the concentration that should not be exceeded during any part of the working exposure.

"Toxic pollutant" means any air pollutant for which no ambient air quality standard has been established. Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants because of their toxic properties or because a TLV® has been established listed in § 112(b) of the Act, as amended by 40 CFR 63.60, or any other air pollutant that the board 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®.

~~9 VAC 5-40-180~~ **9 VAC 5-60-220. Standard for toxic pollutants.**

If a stationary source ~~or operation not part of a stationary source~~ is not exempt under ~~9 VAC 5-40-160~~ **9 VAC 5-60-200** C or, D, or E, then the following standards shall be met:

1. Regardless of any ~~other~~ provision of ~~these regulations~~ *any other regulation of the board*, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of toxic pollutants in such quantities as to cause, or contribute to, any significant ambient air concentration that may cause, or contribute to, the endangerment of human health.
2. The owner of an affected facility shall employ control strategies as may be directed by the board for the control of toxic pollutants. The board may consider the potency and toxicity of each regulated toxic pollutant as well as the technical and economic feasibility of any available control strategies. Possible control strategies may include but are not limited to emission control equipment, process changes, substitution of less toxic or nontoxic materials, or operation and maintenance procedures which lower or eliminate emissions of toxic pollutants.

~~9 VAC 5-40-190~~ **9 VAC 5-60-230. Significant ambient air concentration guidelines.**

For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:

1. For pollutants with a TLV-C®, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-C®.
2. For pollutants with both a TLV-STEL® and a TLV-TWA®, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-STEL® and any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA®.
3. For pollutants with only a TLV-TWA®, any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA® and any one-hour concentration of a toxic pollutant in excess of 1/20 of the TLV-TWA®.

4. Any concentration resulting from the emissions of a toxic pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.

5. Any concentration, other than those specified in subdivision 1, 2, 3, or 4 of this section, including those resulting from toxic pollutants not having a TLV®, which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment of human health. This determination shall be made by considering information by recognized authorities on the specific health effects of such toxic pollutants.

**9 VAC 5-40-200 9 VAC 5-60-240. Submittal of information.**

The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this article. The board may determine the manner and form for the submittal of the information. Such information shall be submitted within 60 days of the request. Reasonable extensions may be granted when deemed appropriate by the board for extensive information gathering, such as emissions testing or review of large and complex facilities, and only if the request is accompanied by a written schedule.

**9 VAC 5-40-210 9 VAC 5-60-250. Determination of ambient air concentrations.**

A. The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or may emit, any toxic pollutant in such quantities as to cause, or contribute to, any concentration exceeding, or which may exceed, any significant ambient air concentration.

B. Ambient air concentrations shall be determined using air quality analysis techniques (modeling) based on emission rates equal to the potential to emit of the stationary source for the applicable averaging time or any other method acceptable to the board.

C. Ambient air concentrations shall include all emissions from the stationary source, including those from sources exempted under 9 VAC 5-60-200 C.

**9 VAC 5-40-220 9 VAC 5-60-260. Compliance.**

A. If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air concentration that is (i) in excess of any significant ambient air concentration specified in 9 VAC 5-60-230 or (ii) has the potential to cause or contribute to substantial and imminent endangerment of human health, the owner shall choose one or more of the following options and comply with the following: schedules contained in 9 VAC 9-60-260 B.

1. For emissions resulting in concentrations which exceed the significant ambient air concentration by a factor of 10 or more times or which the board determines exceed the significant ambient air concentration so as to have the potential to cause or contribute to substantial and imminent endangerment of human health, the owner shall within an approved timetable implement controls which reduce these

~~emissions to a level specified by the board. For any emissions which remain in excess of the guidelines established under 9 VAC 5-40-190, the owner shall choose one or more of the options available under 9 VAC 5-40-220 A 2 and shall comply with the schedules contained in 9 VAC 5-40-220 B.~~

~~2. For emissions other than those specified in 9 VAC 5-40-220 A 1, the owner shall choose one or more of the following options and comply with the schedules contained in 9 VAC 5-40-220 B.~~

a. 1. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to, any of the significant ambient air concentration in 9 VAC 5-40-190 9 VAC 9-60-230 being exceeded.

b. 2. Demonstrate that the applicable significant ambient air concentration in 9 VAC 5-40-190 9 VAC 9-60-230 is inappropriate for the toxic air pollutant in question by showing that the emissions from the affected facility produce no endangerment of human health.

c. 3. Control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.

B. The owner shall notify the board of his choice under ~~subdivision~~ subsection A 2 of this section within 45 days of notification by the department that his facility exceeds the significant ambient air concentration specified in 9 VAC 5-40-190 9 VAC 9-60-230. Within 45 days of notifying the board of the option under ~~subdivision~~ subsection A 2 of this section, the owner shall submit a plan and schedule to the board for approval. If the owner fails to submit either his choice of an option as set out in subsection A or a plan and schedule to implement that option, the board may shall require the owner, on a schedule set out by the board, to install best available control technology to control the facility's emissions in a manner and by a schedule set out by the board comply with subdivision A 3 of this section. All options shall be completed within a reasonable time: 30 days for 9 VAC 5-40-220 A 2 a, 60 days for 9 VAC 5-40-220 A 2 b, and 18 months for 9 VAC 5-40-220 A 2 c. None of the times specified in this subsection include time needed for board approval. Reasonable extensions may be granted when deemed appropriate by the board.

C. Failure of the owner to accomplish any of the alternatives set forth in subsection A of this section in a manner acceptable to the board shall constitute a violation of 9 VAC 5-40-180 9 VAC 5-60-220.

**9 VAC 5-40-230 9 VAC 5-60-270. Public participation.**

If the owner of an affected facility chooses the demonstration under 9 VAC 5-40-220 9 VAC 5-60-260 A 2 b, the provisions of this section shall apply.

1. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.

2. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of ~~subsection C subdivision 3~~ of this section. The notification shall be made by advertisement in one newspaper of general circulation in the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the affected facility exceed the significant ambient air concentration guidelines in ~~9 VAC 5-40-190~~ 9 VAC 5-60-230. The notice shall include a brief description of the *pollutants of concern and their possible impacts*, the demonstration, a statement listing the requirements in ~~9 VAC 5-40-230 subdivisions 4 and 5 of this section~~, and the name and telephone number of a *department staff* person from whom detailed information on the demonstration *and the pollutants* may be obtained.

3. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger human health and (ii) the preliminary review, analysis and tentative determination of the board, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.

4. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under ~~9 VAC 5-40-220~~ 9 VAC 5-60-260 A 2 b. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

- a. The name, mailing address and telephone number of the requester;
- b. The names and addresses of all persons for whom the requester is acting as a representative;
- c. The reason why a hearing is requested; and
- 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, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.

5. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds that one or both of the following apply:

- a. There is significant public interest in the demonstration in question.
- b. There are substantial, disputed issues relevant to the demonstration in question.

6. The board shall notify by mail the owner making the demonstration and each requester, at his last known

address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.

7. If the board decides to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by ~~9 VAC 5-40-230 subdivision 6 of this section~~. The public hearing shall be held in the affected air quality control region.

8. The procedures for notification to the public and availability of information used for the public comment period and provided in ~~subsections B and C subdivisions 2 and 3 of this section~~ shall also be followed for the public hearing.

NOTE: In adopting amendments to this article to be effective ~~October 1, 1994 [effective date]~~, the board ~~replaced the term "noncriteria" with the term "toxic," renumbered the sections.~~ In the interest of economy and efficiency, the board did not make the corresponding change at each place the ~~term "noncriteria" occurs~~ *old section numbers occur* throughout the Regulations for the Control and Abatement of Air Pollution. However, it is the intent of the board to make that change in other parts of the regulations as the opportunity presents itself. Until such changes are made the ~~term "noncriteria" old section numbers (9 VAC 5-40-160 through 9VAC 5-40-230)~~ shall be construed to mean *"toxic" the new section numbers (9 VAC 5-60-200 through 9 VAC 5-60-270) throughout these chapters: the regulations of the board.*

Article 3 5.

*Emission Standards of Performance for Toxic Pollutants from New and Modified Sources (Rule 5-3 6-5).*

~~9 VAC 5-50-160~~ 9 VAC 5-60-300. **Applicability and designation of affected facility.**

A. ~~Regardless of the provisions of 9 VAC 5-50-10 and, Except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each facility or operation, which stationary source that emits or may emit any toxic pollutant and that either (i) is subject to the new source review program or (ii) has a permit containing emission limits and other requirements pursuant to this article or which is subject to the new and modified source provisions of 9 VAC 5 Chapter 80 (9 VAC 5-80-10 et seq.), that emits or may omit any toxic pollutant.~~

B. ~~The board may establish the priorities for implementation of this article by either affected facility type or pollutant type. The priorities may be established in consideration of the following factors: potential public health impact, nature and amount of pollutants emitted on a statewide basis, degree of regulation by other governmental entities, and available resources. The board, at the request of an owner or owners, may defer implementation of this article for a facility or any group of facilities where technical issues necessitate further analysis and study in order to implement the article for the affected facility or facilities. The board may prescribe the procedures for the prioritization of implementation of this article and for the deferral of implementation of this article by policy.~~



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

~~D. Exemption determination~~ C. This article shall not apply to the following.

1. ~~Exempted from the provisions of this article is any A stationary source or operation not part of a stationary source which~~ that has a potential to emit a toxic pollutant with a TLV<sup>®</sup> at a level equal to or less than the ~~exempt exemption~~ emission rate calculated using the following exemption formulas set forth below for the applicable TLV<sup>®</sup>. If more than one exemption formula applies to a toxic pollutant emitted by a source, the potential to emit for that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be ~~exempt exempted~~ for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV<sup>®</sup> has been established.

a. For toxic pollutants with a TLV-C<sup>®</sup>, the following exemption formula applies, provided the potential to emit does not exceed 22.8 pounds per hour:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-C}^{\text{®}}(\text{mg/m}^3) \times 0.033$$

b. For toxic pollutants with both a TLV-STEL<sup>®</sup> and a TLV-TWA<sup>®</sup>, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-STEL}^{\text{®}}(\text{mg/m}^3) \times 0.033$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA}^{\text{®}}(\text{mg/m}^3) \times 0.145$$

c. For toxic pollutants with only a TLV-TWA<sup>®</sup>, the following exemption formulas apply, provided the potential to emit does not exceed 22.8 pounds per hour or 100 tons per year:

$$\text{Exempt Emission Rate (pounds per hour)} = \text{TLV-TWA}^{\text{®}}(\text{mg/m}^3) \times 0.066$$

$$\text{Exempt Emission Rate (tons per year)} = \text{TLV-TWA}^{\text{®}}(\text{mg/m}^3) \times 0.145$$

2. ~~Exemption from the provisions of this article for any A stationary source or operation not part of a stationary source which~~ that has a potential to emit any toxic pollutant without a TLV<sup>®</sup> will be determined by the board if, upon the owner's request, the board determines to exempt that toxic pollutant from the provisions of this article using available health effects information.

3. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in ~~9 VAC 5-50-200~~ 9 VAC 5-60-340.

~~E. Exemptions for toxic pollutants otherwise regulated.~~

1. ~~Owners of sources emitting toxic pollutants regulated under any of the following may apply to the board for an exemption from this article:~~

a. ~~Hazardous air pollutants regulated under § 112 of the Federal Clean Air Act, except to the extent such pollutants are omitted from facilities which are not subject to emission standards in Article 1 (9 VAC 5-60-60 et seq.) of 9 VAC 5 Chapter 60.~~

b. ~~Substances regulated under 9VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) (the Virginia Hazardous Waste Management (HWM) Regulations) which are disposed of in an incinerator as defined by those regulations that (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.) and (ii) has received an HWM permit or qualified for interim status in accordance with 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). The board shall be furnished with an acceptable certification that such incinerator is in compliance with the standards of its HWM permit or interim status and applicable provisions of 9 VAC 20 Chapter 60 (9 VAC 20-60-10 et seq.). Facilities which burn hazardous waste for energy recovery are not exempt from this article.~~

2. ~~Exemptions for these pollutants shall be granted provided the regulation of the toxic pollutant listed is based on an assessment of health effects and not solely on control technology considerations.~~

3. ~~A stationary source subject to an emission standard or other requirement set forth in Article 2 (9 VAC 5-60-10 et seq.) of this part. If less than all of the stationary source is regulated by such an emission standard or other requirement, then only that part of the stationary source regulated by the emission standard or other requirement is exempted.~~

4. ~~A stationary source in a source category that is regulated by an emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act and subject to the source category schedule for standards. If less than all of the stationary source is in a source category that is regulated by such an emission standard or other requirement, then only that part of the stationary source in the source category regulated by the emission standard or other requirement is exempted.~~

5. ~~A stationary source in a source category for which the U.S. Environmental Protection Agency has made a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act and has published the determination in the source category schedule for standards.~~

6. ~~A boiler, incinerator, or industrial furnace as defined in 9 VAC 20-60-10 and subject to 9 VAC 20-60, provided it (i) meets the 99.99% destruction and removal efficiency standard required by 9 VAC 20-60, and (ii) has received a permit or has qualified for interim status in accordance with 9 VAC 20-60. The board shall be furnished with an acceptable certification that such boiler, incinerator, or industrial furnace is in compliance with the standards of its permit or interim status and applicable provision of 9 VAC 20-60. Facilities that burn hazardous waste for energy recovery are not exempted from this article.~~

7. A generator or boiler that burns only natural gas, #2 fuel oil, #4 fuel oil, #6 fuel oil, propane, or kerosene.

~~F.~~ D. Provisions of this article do not apply to any consumer product used in the same manner as normal consumer use, provided the use results in a duration and frequency of exposure which is not greater than exposures experienced by consumers. This may include, but not be limited to, personal use items, janitorial cleaning supplies, and facility grounds maintenance products, such as fertilizers, pesticides, and paints for structural components.

~~G.~~ E. With regard to the application of pesticides, the provisions of this article shall apply only to the air quality impact from emissions from application inside the premises of the following affected facilities:

1. Industrial and manufacturing operations, including warehouse and storage operations related to the operation of these facilities ~~; and~~.
2. Warehouse and storage operations at transportation terminals.

*The provisions of this article shall not apply to the air quality impact from emissions from the application of any pesticide outside.*

~~H.~~ F. No provision of this article shall limit the power of the board to apply the provisions of this article to any affected facility in order to prevent or remedy a condition that may cause or contribute to the endangerment of human health.

~~9 VAC 5-50-170~~ **9 VAC 5-60-310. Definitions.**

A. For the purpose of ~~these~~ the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, 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 here shall have the meanings given them in 9VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

*"Best available control technology"* means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each toxic pollutant which the board, 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. If the board 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 of them, 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 which achieve equivalent results.

*"Fugitive emissions"* means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening designed for eliminating emissions from the structure.

*"Pesticide"* means the same as the definition given in § 3.1-249.27 of the Virginia Pesticide Control Act.

*"Potential to emit"* means an emission rate based on the maximum capacity of a stationary source to emit a toxic pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a toxic 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 or federally enforceable. *Fugitive emissions shall be included in determining a stationary source's potential to emit.*

*"Significant ambient air concentration"* means the concentration of a toxic pollutant in the ambient air that if exceeded may have the potential to injure human health.

*"Source category schedule for standards"* means the schedule issued pursuant to § 112(e) for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 66 FR 8220, January 30, 2001.

*"Threshold limit value (TLV®)"* means the maximum airborne concentration of a substance to which the ACGIH believes that nearly all workers may be repeatedly exposed day after day without adverse effects and which is published in the American Conference of Governmental Industrial Hygienists (ACGIH) Handbook (see 9 VAC 5-20-21). The TLV® is divided into three categories: TLV-Time-Weighted Average® (TLV-TWA®), TLV-Short-Term Exposure Limit® (TLV-STEL®), and TLV-Ceiling® (TLV-C®).

*"TLV-TWA®"* means the time-weighted average concentration for a normal eight-hour workday and a 40-hour workweek, to which nearly all workers may be repeatedly exposed, day after day, without adverse effect (as defined in the ACGIH Handbook).

*"TLV-STEL®"* means the concentration to which workers may be exposed continuously for a short period of time without suffering from irritation, chronic or irreversible tissue damage, or narcosis of sufficient degree to increase the likelihood of accidental injury, impair self-rescue or materially reduce work efficiency. The TLV-STEL supplements the TLV-TWA® where there are recognized acute effects from a substance whose toxic effects are primarily of a chronic nature.

*"TLV-C®"* means the concentration that should not be exceeded during any part of the working exposure.

*"Toxic pollutant"* means any air pollutant for which no ambient air quality standard has been established. ~~Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants because of their~~

~~toxic properties or because a TLV® has been established listed in § 112(b) of the Act, as amended by 40 CFR 63.60, or any other air pollutant that the board 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®.~~

~~9 VAC 5-50-180~~ **9 VAC 5-60-320. Standard for toxic pollutants.**

If a stationary source ~~or operation not part of a stationary source~~ is not exempt under ~~9 VAC 5-50-160~~ 9 VAC 5-60-300 C ~~or, D, or E~~, then the following standards shall be met:

1. Regardless of any ~~other~~ provision of ~~these regulations~~ *any other regulation of the board*, no owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions of toxic pollutants in such quantities as to cause, or contribute to, any significant ambient air concentration that may cause, or contribute to, the endangerment of human health.
2. The owner of new or modified sources shall employ best available control technology as may be approved by the board for the control of toxic pollutants.

~~9 VAC 5-50-190~~ **9 VAC 5-60-330. Significant ambient air concentration guidelines.**

For the purpose of case-by-case consideration between the board and the owner, significant ambient air concentrations are any of the following:

1. For pollutants with a TLV-C®, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-C®.
2. For pollutants with both a TLV-STEL® and a TLV-TWA®, any one-hour concentration of a toxic pollutant in excess of 1/40 of the TLV-STEL® and any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA®.
3. For pollutants with only a TLV-TWA®, any annual concentration of a toxic pollutant in excess of 1/500 of the TLV-TWA® and any one-hour concentration of a toxic pollutant in excess of 1/20 of the TLV-TWA®.
4. Any concentration resulting from the emissions of a toxic pollutant from an affected facility which the owner knows, or reasonably should be expected to know, may cause, or contribute to, the endangerment of human health.
5. Any concentration, other than those specified in subdivision 1, 2, 3, or 4 of this section, including those resulting from toxic pollutants not having a TLV®, which the board determines to cause, to have the potential to cause, or to contribute to, the endangerment of human health. This determination will be made by considering information by recognized authorities on the specific health effects of such toxic pollutants.

~~9 VAC 5-50-200~~ **9 VAC 5-60-340. Submittal of information.**

The owner of an affected facility shall upon the request of the board submit such information as may be needed to determine the applicability of, or compliance with, this article.

The board may determine the schedule, manner and form for the submittal of the information.

~~9 VAC 5-50-210~~ **9 VAC 5-60-350. Determination of ambient air concentrations.**

A. The owner shall, upon the request of the board, provide an assessment as to whether his facility emits, or may emit, any toxic pollutant in such quantities as to cause, or contribute to, any concentration exceeding, or which may exceed, any significant ambient air concentration.

B. Ambient air concentrations shall be determined using air quality analysis techniques (modeling) based on emission rates equal to the facility's potential to emit for the applicable averaging time or any other method acceptable to the board.

C. *Ambient air concentrations shall include all emissions from the stationary source, including those from sources exempted under 9 VAC 5-60-300 C.*

~~9 VAC 5-50-220~~ **9 VAC 5-60-360. Compliance.**

If the board has reason to believe that the emissions from an affected facility are, or may be, discharged in such quantities so as to cause, or contribute to, any ambient air concentration that is (i) in excess of any significant ambient air concentration specified in ~~9 VAC 5-50-190~~ 9 VAC 5-60-330 or (ii) *has the potential to cause or contribute to substantial and imminent endangerment of human health*, a permit shall not be issued until the owner complies with one or more of the following:

1. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to, any of the significant ambient air concentrations in ~~9 VAC 5-50-190~~ 9 VAC 5-60-330 being exceeded;
2. Demonstrate that the applicable significant ambient air concentration in ~~9 VAC 5-50-190~~ 9 VAC 5-60-330 is inappropriate for the toxic air pollutant in question by showing that the emissions from the affected facility produce no endangerment of human health; ~~or~~.
3. Control the emissions from the affected facility to a level resulting in ambient air concentrations that are below the significant ambient air concentrations or resulting in such other ambient air concentrations acceptable to the board.

~~9 VAC 5-50-230~~ **9 VAC 5-60-370. Public participation.**

If the owner of an affected facility chooses the demonstration under ~~9 VAC 5-50-220~~ subdivision 2 of 9 VAC 5-60-360, the provisions of this section shall apply.

1. Prior to the decision of the board on the acceptability of the demonstration, the demonstration shall be subject to a public comment period of at least 30 days.
2. The board shall notify the public of the opportunity for public comment on the information available for public inspection under the provisions of subdivision 3 of this section. The notification shall be made by advertisement in one newspaper of general circulation in the affected air quality control region and, if available, one newspaper that circulates in the area where the affected facility is located. A copy of the notice shall be sent to the governing body of

the locality where the affected facility is located and to the governing bodies of the localities where ambient air quality impacts from the affected facility exceed the significant ambient air concentration guidelines in ~~9 VAC 5-50-190~~ 9 VAC 5-60-330. The notice shall include a brief description of *the pollutants of concern and their possible health impacts*, the demonstration, a statement listing the requirements in subdivisions 4 and 5 of this section, and the name and telephone number of a *department staff* person from whom detailed information on the demonstration *and the pollutants* may be obtained.

3. Information relevant to the demonstration, including (i) information produced by the owner showing that the emissions from the affected facility do not endanger human health and (ii) the preliminary review, analysis and tentative determination of the board, shall be available for public inspection during the entire comment period in at least one location in the affected air quality control region.

4. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the source's demonstration under ~~9 VAC 5-50-220~~ subdivision 2 of 9 VAC 5-60-360. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

- a. The name, mailing address and telephone number of the requester;
- b. The names and addresses of all persons for whom the requester is acting as a representative;
- c. The reason why a hearing is requested; and
- 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, including an explanation of how and to what extent such interest would be directly and adversely affected by the demonstration in question.

5. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper. Within 30 calendar days following the expiration of the public comment period the board shall grant a public hearing if it finds that one or both of the following apply:

- a. There is significant public interest in the demonstration in question.
- b. There are substantial, disputed issues relevant to the demonstration in question.

6. The board shall notify by mail the owner making the demonstration and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of the procedures for the public hearing and for the final determination under this section.

7. If the board determines to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required by subdivision 6

of this section. The public hearing shall be held in the affected air quality control region.

8. The procedures for notification to the public and availability of information used for the public comment period and provided in subdivisions 2 and 3 of this section shall also be followed for the public hearing.

NOTE: In adopting amendments to this article to be effective ~~October 1, 1994~~ [effective date], the board *renumbered the sections*. In the interest of economy and efficiency, the board did not make the corresponding change at each place the term "~~noncriteria~~" ~~occurs~~ *old section numbers occur* throughout the Regulations for the Control and Abatement of Air Pollution. However, it is the intent of the board to make that change in other parts of the regulations as the opportunity presents itself. Until such changes are made the term "~~noncriteria~~" *old section numbers (9 VAC 550-160 through 9 VAC 5-50-230)* shall be construed to mean "~~toxic~~" ~~in these chapters~~ *the new section numbers (9 VAC 5-60-300 through 9 VAC 5-60-370)* throughout the regulations of the board.

VA.R. Doc. No. R01-37; Filed September 24, 2001, 1:47 p.m.