

Virginia Regulatory Town Hall

Final Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	9 VAC 5-20-206
Secondary Action(s):	9 VAC 5-40-10 et seq.
Action Title:	Early Reduction Credit (Rev. C03)
Date:	November 6, 2003

Please refer to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), Executive Order Twenty-Five (98), and the Virginia Register Form, Style and Procedure Manual for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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

Currently, Chapter 40 of the Regulations for the Control and Abatement of Air Pollution contains a number of regulations with VOC emission standards. The geographic applicability of these rules is defined by establishing VOC emissions control areas (in a list located in 9 VAC 5-20-206 of Chapter 20). Chapter 40 also contains a regulation (Rule 4-4) that establishes a process for making case-by-case control technology determinations for major sources of VOC and NO_x. The geographic applicability of these rules is defined by the VOC emissions control areas as well as NO_x emissions control areas.

Each of these Chapter 40 rules contains, in the applicability section, the following statement: "The provisions of this article apply to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9 VAC 5-20-206." Geographic applicability and reference to emissions control areas is also found in the VOC and NO_x requirements of Article 4. Therefore, in order for these rules to apply in the areas that wish to participate in the early reduction program, the localities must belong to a VOC and a NO_x Emissions Control Area. To this end, new VOC and NO_x Emissions Control Areas have been added to the list in 9 VAC 5-20-206 for the Western Virginia Emissions Control Area (Botetourt, Frederick, and Roanoke Counties, and Roanoke, Salem, and Winchester Cities).

Substantial Changes Made Since the Proposed Stage

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

1. The VOC and NO_x Emissions Control Areas have been revised to be limited to localities that are participating in the early reduction program. [9 VAC 5-20-206 1 d; 9 VAC 5-40-5200 B]
2. VOC RACT is no longer required of new areas, and NO_x RACT applicability in the new areas has been revised from 25 tons to 100 tons and over. [9 VAC 5-40-300 B and C; 9 VAC 5-40-310 C, D, and E]

Statement of Final Agency Action

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

On November 5, 2003, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, Early Reduction Credit (9 VAC Chapters 20 and 40). The regulation amendments are to be effective on a date as provided in the Administrative Process Act. Additionally, the board removed some localities from the list of VOC and NO_x Emissions Control Areas in 9 VAC 5-20-206 and placed them in a new section 9 VAC 5-20-500. The localities moved to 9 VAC 5-20-500 were those localities that have the potential to become nonattainment areas under the 8-hour ozone standard, but are not participating in an early reduction compact. The new emissions control areas are the Fredericksburg Emissions Control Area (Spottsylvania County and Fredericksburg City) and the Western Virginia Emissions Control Area (Albemarle County, Augusta County, Pittsylvania County, Rockingham County, and the portions of Page County and Madison County containing Shenandoah National Park). The board deferred action on 9 VAC 5-20-500 until the first available meeting after EPA makes the final designations for the 8-hour standard, which is expected to occur in April 2004.

Basis

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation adopted. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to adopt the regulation.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health

and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the regulation amendments is available upon request.

Purpose

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

The purpose of the regulation is to require owners to limit emissions of air pollution from sources of VOCs and NO_x to the level necessary for (i) the protection of public health and welfare, and (ii) the attainment and maintenance of the air quality standards. The amendments are being made to implement a program established by EPA for areas potentially designated as nonattainment under the 8-hour ozone standard. This program enables such areas to avoid the nonattainment designation through early reduction credits.

Substance

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

Currently, Chapter 40 of the Regulations for the Control and Abatement of Air Pollution contains a number of regulations with VOC emission standards. The geographic applicability of these rules is defined by establishing VOC emissions control areas (in a list located in 9 VAC 5-20-206 of Chapter 20). Chapter 40 also contains a regulation (Article 4) that establishes a process for making case-by-case control technology determinations for major sources of VOC and NO_x. The geographic applicability of these rules is defined by the VOC emissions control areas as well as NO_x emissions control areas. The VOC and NO_x regulations found in Chapter 40 are as follows:

- Article 4 - General Process Operations
- Article 5 - Synthesized Pharmaceutical Products Manufacturing Operations
- Article 6 - Rubber Tire Manufacturing Operations
- Article 24 - Solvent Metal Cleaning Operations Using Non-halogenated Solvents
- Article 25 - Volatile Organic Compound Storage and Transfer Operations
- Article 26 - Large Appliance Coating Application Systems
- Article 27 - Magnet Wire Coating Application Systems
- Article 28 - Automobile And Light Duty Truck Coating Application Systems
- Article 29 - Can Coating Application Systems
- Article 30 - Metal Coil Coating Application Systems
- Article 31 - Paper and Fabric Coating Application Systems
- Article 32 - Vinyl Coating Application Systems
- Article 33 - Metal Furniture Coating Application Systems
- Article 34 - Miscellaneous Metal Parts and Products Coating Application Systems

Article 35 - Flatwood Paneling Coating Application Systems
Article 36 - Flexographic, Packaging Rotogravure and Publication Rotogravure Printing Lines
Article 37 - Petroleum Liquid Storage and Transfer Operations
Article 39 - Asphalt Paving Operations
Article 40 - Open burning

Each of these Chapter 40 rules contains, in the applicability section, the following statement: "The provisions of this article apply to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9 VAC 5-20-206." Geographic applicability and reference to emissions control areas is also found in the VOC and NO_x requirements of Article 4. Therefore, in order for these rules to apply in the areas that wish to participate in the early reduction program, the localities must belong to a VOC and a NO_x Emissions Control Area. To this end, new VOC and NO_x Emissions Control Areas have been added to the list in 9 VAC 5-20-206 for the Western Virginia Emissions Control Area (Botetourt, Frederick, and Roanoke Counties, and Roanoke, Salem, and Winchester Cities).

Issues

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

1. Public: Public health and welfare will benefit through the reduction of ozone air pollution. By implementing this program in advance of EPA's 8-hour implementation policies, these areas will enjoy this benefit sooner than if they waited for final implementation. Additionally, by avoiding official designation as nonattainment, these areas will avoid the consequences of the nonattainment designation, including the imposition of offsets on new major stationary sources, and the need to make transportation and general conformity determinations.

2. Department: The department will benefit from a better understanding of air emissions from these areas, and will benefit from more accurate long- and short-term air quality planning though the state overall. There is a slight disadvantage to the department in that more sources will have to be permitted and inspected, resulting in an increased workload; however, this disadvantage should be outweighed by the benefit of avoiding resource-intensive nonattainment area new source review.

Public Comment

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

A summary and analysis of the public testimony, along with the basis for the decision of the Board, is attached.

Detail of Changes

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

1. The VOC and NO_x Emissions Control Areas have been revised to be limited to localities that are participating in the early reduction program. [9 VAC 5-20-206 1 d; 9 VAC 5-40-5200 B]
2. VOC RACT is no longer required of new areas, and NO_x RACT applicability in the new areas has been revised from 25 tons to 100 tons and over. [9 VAC 5-40-300 B and C; 9 VAC 5-40-310 C, D, and E]

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION C03
CONCERNING

EARLY REDUCTION CREDIT
(9 VAC 5 CHAPTERS 20 AND 40)

INTRODUCTION

At the April 2003 meeting, the board authorized the department to promulgate for public comment a proposed regulation revision concerning early reduction credit.

A public hearing was advertised accordingly and held in Harrisonburg, Virginia on August 26, 2003 and the public comment period closed on September 12, 2003. The proposed regulation amendments subject to the hearing are summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering early reduction credit. A summary of the amendments follows:

1. Two new VOC Emissions Control Areas have been added to the list in Chapter 20: Northeastern Virginia Emissions Control Area (Caroline, Fauquier, and Spottsylvania Counties and Fredericksburg City), and the Western Virginia Emissions Control Area (Albemarle, Augusta, Botetourt, Frederick, Pittsylvania, Roanoke, and Rockingham Counties, the portions of Page and Madison Counties containing Shenandoah National Park, and Roanoke, Salem, and Winchester Cities). [9 VAC 5-20-206 1 d and e]
2. Two new NO_x Emissions Control Areas have been added to the list in Chapter 20: Northeastern Virginia Emissions Control Area (Caroline, Fauquier, and Spottsylvania Counties and Fredericksburg City), and the Western Virginia Emissions Control Area (Albemarle, Augusta, Botetourt, Frederick, Pittsylvania, Roanoke, and Rockingham Counties, the portions of Page and Madison Counties containing Shenandoah National Park, and Roanoke, Salem, and Winchester Cities). [9 VAC 5-20-206 2 d and e]
3. A note indicating that VOC standards prescribed in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.) are not applicable in certain localities in the Hampton Roads Emissions Control Area has been expanded to indicate that this exception is not applicable to the

emission standards for VOCs prescribed in Article 37 (9 VAC 5-40-5200 et seq.) of Part II of 9 VAC 5 Chapter 40. These localities are subject to Article 37 by state law. [footnote to 9 VAC 5-20-206 1 c]

4. In Article 4 of Chapter 40, the Northeast and Western Emissions Control Areas are added to the applicability section of the standard for VOCs. [9 VAC 5-40-300 B]
5. In Article 4 of Chapter 40, the Northeast and Western Emissions Control Areas, with dates by which sources are to notify the board of their applicability status, commit to making a VOC RACT determination, and provide a determination and compliance schedule, are added. The theoretical potential to emit for these areas is 25 tons per year or greater. [9 VAC 5-40-300 C 4]
6. In Article 4 of Chapter 40, the Northeast and Western Emissions Control Areas are added to the applicability section of the standard for NO_x. The theoretical potential to emit for major sources in these areas is 25 tons per year or greater. [9 VAC 5-40-310 C]
7. In Article 4 of Chapter 40, the Northeast and Western Emissions Control Areas, with dates by which sources are to notify the board of their applicability status, commit to making a NO_x RACT determination, and provide a determination and compliance schedule, are added. [9 VAC 5-40-310 D and E]
8. In Article 37 of Chapter 40, the applicability section is revised to clarify what localities must comply with or be exempt from certain requirements. This is necessary for consistency with Virginia law. [9 VAC 5-40-5200 B]
9. In Article 37 of Chapter 40, a minor correction has been made to a reference to kerosene and fuel oil. [9 VAC 5-40-5200 C]
10. In Article 37 of Chapter 40, 9 VAC 5-40-5220 F 3 has been deleted, as the information has been moved to the applicability section of 9 VAC 5-40-5200 B.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Harrisonburg, Virginia on August 26, 2003. Three persons attended the hearing, none of whom offered testimony; and seven additional written comments were received during the public comment period. As required by law, notice of this hearing was given to the public on or about July 14, 2003 in a number of local newspapers, including the Harrisonburg Daily News Record. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT:** Support for the proposal.

COMMENTER: Virginia Department of Transportation

TEXT: The Virginia Department of Transportation supports the proposal, and believes that it will help improve Virginia's air quality. In addition, the proposed regulations will ensure successful development of Early Action Plans in both Roanoke and Winchester, and will help in the development of the 8-hour Fredericksburg nonattainment area State Implementation Plan. We also encourage the expansion of open burning regulations to new VOC emissions control areas. Consistent statewide-implemented regulations will increase awareness of and compliance with such regulations.

RESPONSE: Support for the proposal is appreciated.

2. **SUBJECT:** Reasonably Available Control Technology (RACT)

COMMENTER: U.S. Environmental Protection Agency

TEXT: U.S. EPA supports these amendments with the following concerns. The proposed amendments impose new RACT requirements on major sources in newly designated emission control areas. These RACT requirements impose both presumptive standards for certain categories of sources as well as case-by-case control technology determinations for individual sources. Presumptive NO_x RACT sources will be required to submit a plan for complying with the emission standards by January 2004. There is no specific date required for VOC or NO_x case-by-case resources to submit a similar plan other than three months after promulgation of the regulation. All affected sources must comply with RACT by November 15, 2005.

It is EPA's experience that the final implementation and state implementation plan (SIP) approval of case-by-case RACT determinations are often subject to unplanned delays that may extend well beyond regulatory or planning deadlines, even where RACT has been a statutory requirement under the Clean Air Act. As you know, RACT is voluntary for the Roanoke and Northern Shenandoah Valley areas as part of the local measures needed to demonstrate early attainment of the 8-hour ozone standard. The Early Action Compacts (EACs) obligate these areas to submit a complete SIP revision to EPA by December 31, 2004, with implementation of local control measures no later than December 31, 2005.

This means that if the EAC areas take credit for RACT in the EAC SIP, the RACT plans must be fully adopted by the date the SIP is due. This timing is critical so that EPA may deem the EAC SIPs complete and to allow EPA sufficient time to publish a second deferral of the EAC area nonattainment designations and fully approve the EAC SIPs no later than September 30, 2005.

EPA commends efforts to expand RACT requirements to EAC areas because it will result in quantifiable emission reductions and will represent a substantial investment in local air quality. The EAC program was established on the presumption that EAC areas would adopt local control measures to reduce emissions, both as an investment in their own air quality and to advance early attainment of the 8-hour ozone standard. Therefore, EPA strongly encourages the adoption of these RACT regulations as a critical element of the EAC plan. Nevertheless, EPA cautions that realistic timeframes be considered when adopting these regulations, particularly for case-by-case RACT, taking into account the number and complexity of potentially affected sources. On November 14, 2002 EPA issued guidance on the EAC program that sets forth critical milestones that must be met in order to retain eligibility in the EAC program. If the December 2004 milestone for submitting a complete EAC SIP to EPA is missed, the areas will no longer be eligible to continue in the early reduction program and the designation deferral will have to be withdrawn.

RESPONSE: We agree that realistic timeframes must be considered when adopting regulations. It does not appear that RACT determinations for VOC and NO_x sources 25 tons per year and over could be prepared, submitted, and approved in a timely manner. The potential benefits associated with these determinations would be far outweighed by jeopardizing the EACs as a whole. However, we also believe that imposing RACT on NO_x sources 100 tons and over can be feasibly finalized in the necessary timeframe, and would provide necessary reductions for ensuring the plans' success. The regulation has been revised to remove VOC RACT for the new areas and to require NO_x RACT on sources 100 tons and over in the new areas.

3. **SUBJECT:** Designation of nonattainment areas/EAC participation

COMMENTER: Albemarle County

TEXT: It appears that Albemarle County was never notified regarding participation in an EAC. The two EACs formed are not connected geographically to Albemarle County. The list of localities does not include such municipalities as Charlottesville, Harrisonburg, and Staunton, which appears to conflict with the implied intention of clustering these areas geographically. Albemarle County was not recommended for nonattainment status by Virginia. Currently, there is no monitoring data that suggests that it is not meeting the 8-hour standard. Therefore, we do not feel that Albemarle County should be grouped with any areas proposed for nonattainment. Albemarle County does not wish to participate with any EAC at this time.

RESPONSE: At the time the original proposal was made, it was not certain which localities would be formally designated nonattainment for the 8-hour standard. The proposal was designed to be as inclusive as possible, to allow for the potential inclusion of areas--even those which Virginia does not believe should be designated nonattainment, and were not recommended by the state for inclusion--in order to provide the ability to begin implementing control plans if necessary. We thought it prudent to develop the proposal as a worst-case scenario with the assumption that a number of these localities would eventually be removed from the list. Based on continuing discussion with EPA, we are reasonably certain that Albemarle County will not be designated nonattainment for the 8-hour standard, and are therefore removing it from the regulation.

4. **SUBJECT:** Applicability; designation of nonattainment areas.

COMMENTER: Dan River, Dominion, Merck, Virginia Manufacturers Association

TEXT: The proposal would designate additional areas of the Commonwealth as VOC and NO_x emission control areas. As a result, existing sources of VOCs and NO_x would become subject to additional emission control requirements set forth in 9 VAC 5 Chapter 40. In many instances this may require sources to retrofit with additional emission control equipment or to fundamentally alter process operations to meet new emission limits.

Historically, areas of the Commonwealth have been designated as VOC and NO_x emission control areas because the areas are or had at one time not met the national ambient air quality standard for ozone. The rationale for designating these areas as VOC and NO_x emission control areas and for subjecting sources in these areas to additional emission control requirements is straightforward. VOCs and NO_x contribute to the formation of ozone. Thus, in areas of the Commonwealth where ozone formation must be reduced to meet the ozone NAAQS, additional limitations on VOC and NO_x emissions are warranted. However, such costly additional controls are not warranted in areas of the Commonwealth that meet the ozone NAAQS.

The preamble to the proposed regulations states that the "proposed amendments are being made to implement a program established by EPA for areas potentially designated as nonattainment under the 8-hour ozone standard. This program enables such areas to avoid the nonattainment designations through early reduction credits." The Roanoke and Winchester areas have entered into memoranda of agreement with EPA to implement voluntary early reduction programs. To the extent that the proposed regulations are necessary to assist these areas in their early reduction efforts, we support the proposed regulations.

Unfortunately, the proposed regulations go beyond the stated purpose of providing tools to the Roanoke and Winchester areas to implement their early reduction compacts with EPA. These two areas entered into the early reduction compacts because the department and EPA agree that these areas do not meet the ozone NAAQS and, therefore, it is a virtual

certainty that absent the early reduction program, EPA would designate these areas as 8-hour ozone nonattainment areas. However, this is not the case for several other localities also included in the proposed new VOC and NO_x emission control areas (Albemarle, Augusta, Rockingham, and Pittsylvania counties).

The proposed regulations include in the new VOC and NO_x emission control areas additional counties the department believes should not be designated as nonattainment. Thus, there is a substantial possibility that EPA will not designate these additional counties as ozone nonattainment areas. Moreover, these additional counties have not been and, in all likelihood, never will be, admitted by EPA into its early reduction program because the time for entering into such compacts with EPA has long passed. In short, it would be totally unnecessary to saddle manufacturers and other businesses in those counties with the costly additional emission control requirements if the counties cannot enter an early reduction compact and are, in fact, never designated nonattainment.

We urge the department to revise the regulations to apply only to those localities in the Roanoke and Winchester areas that have entered into an early reduction compact, and to remove those additional counties that are not. It would be a costly mistake to subject industry to emission controls that are unwarranted if EPA does not designate these counties as nonattainment.

RESPONSE: As discussed in the response to comment 3, the original proposal was designed as a worst-case scenario. At the time the original proposal was made, it was uncertain which localities would be formally designated nonattainment for the 8-hour standard. The proposal was intentionally as inclusive as possible, to allow for the potential inclusion of areas--even those which Virginia does not believe should be designated nonattainment, and were not recommended by the state for inclusion--in order to provide the ability to begin implementing control plans if necessary. In order for new nonattainment areas to minimize their nonattainment areas baseline and to be able to take credit for emission reductions as soon as possible, localities with the potential to be designated nonattainment were included, even if they did not qualify for or wish to participate in an EAC.

It is now reasonably certain that the counties of Albemarle, Augusta, Caroline, Fauquier, Madison, Page, Pittsylvania, and Rockingham will not be designated nonattainment for the 8-hour standard, and therefore they are being removed from the regulation. On the other hand, since the Northeastern Virginia Emissions Control Area (since revised to be titled the Fredericksburg Emissions Control Area) will very likely be designated nonattainment, they will remain as a new emission control area subject to the provisions of this regulatory action. This will be part of their upcoming nonattainment plan, not an EAC.

Making these localities subject to the VOC standards now, rather than waiting for the formal nonattainment designation, has a number of advantages. First, when these areas become designated nonattainment, they will have to prepare nonattainment area SIPs with legally enforceable control measures and a demonstration that implementation of these measures will result in the localities achieving attainment. Implementation of the VOC

standards would be the primary recommended strategy once the final designations are made. By implementing these strategies now, two years of regulatory development will be saved. The localities will be able to make emission reductions that will in turn reduce the baseline of emissions that they must later reduce. They will also be able to take credit for these measures in their nonattainment plans.

There are no benefits from waiting until the formal designation process is complete to begin developing controls for the Fredericksburg area. Apart from planning considerations, not acting now will subject the citizens of the area to unacceptable pollution levels for an additional two to three years. Nor would the regulated community benefit: the later the regulations are implemented, the greater the baseline from which reductions must be met with less time in which to accomplish them.

5. **SUBJECT:** Inclusion of localities.

COMMENTER: Dominion

TEXT: Dominion fully agrees with the stated intended purpose of the rule change to enable "areas to avoid nonattainment designation through currently reduction credits." Nevertheless, we urge the department to amend the regulations so that those areas that can no longer qualify for the early reduction program not be designated in the proposed rule for inclusion on the list of new VOC and NO_x control areas.

As stated in the agency background document, the list of potentially affected localities is overly inclusive. As further explained in the Virginia Register notice, "the proposed list of new control areas is believed to be more inclusive than what the final designations will comprise. If this is the case, the board plans to drop some of the areas from the current proposed list in the final stage of these proposed regulations . . . the purpose of designating other localities as emissions control areas with these proposed changes is for timing and planning purposes. The department anticipates that the time these proposed regulations become effective will coincide with about the time nonattainment designations will be made. And, if these areas are designated as nonattainment, the regulatory authority will exist to start taking necessary measures without having to promulgate a new set of amendments."

Dominion certainly applauds the department's foresight and efforts to streamline regulatory actions. However, Dominion cannot endorse the premature inclusion into VOC and NO_x control areas those areas not yet officially designated, and more importantly, those not even exhibiting violations of the standard. Data collected and reported by the department show that the design values over the 2000-2002 period for monitoring locations in Fauquier, Caroline, and Page counties are below the 85-ppb threshold for nonattainment of the 8-hour ozone standard. In fact, the department specifically indicated that "Caroline and Fauquier counties could be removed from the nonattainment list" in its submittal of recommended nonattainment areas to EPA.

Although the ozone season in Virginia does not officially end until October 31, ozone data collected through mid-August 2003 reflect a reasonable possibility that the 2001-2003 design values, which EPA will use in making the final designation determinations, will remain below the 85-ppb threshold. In addition, significant NO_x reductions from the regional NO_x SIP call beginning next year are anticipated to effect additional air quality improvement throughout the Commonwealth which should further enhance the ability of these areas to maintain attainment of the ozone standard and assist areas that are marginally above the standard to achieve attainment as well.

In light of the severe economic consequences that could be required of sources subject to the potential expansion of the VOC and NO_x control areas, especially when they are not needed, Dominion urges the department to drop the overly inclusive areas. It is important that these rules be developed as efficiently as possible, but they must also be developed in a manner that minimizes as much as possible the economic impacts on the Commonwealth.

RESPONSE: As discussed in the responses to comments 3 and 4, the original proposal was designed as a worst-case scenario. It is better to have a more inclusive program and then remove various unneeded provisions than to begin with the minimum and be forced to bring significant new provisions to the board for final approval. It is reasonably certain that the counties of Albemarle, Augusta, Caroline, Fauquier, Pittsylvania, and Rockingham will not be designated nonattainment, and they are therefore being removed from the list. The affected portions of Madison and Page counties are rural (portions of Shenandoah National Park) with no sources to control, and are also being removed from the list. On the other hand, since the Fredericksburg Emissions Control Area will likely be designated nonattainment, it will remain as a new emission control area. This regulatory action will become part of their upcoming nonattainment plan, not an EAC. Making these localities subject to the VOC standards now, rather than waiting for the formal nonattainment designation, has a number of advantages, as discussed in the response to comment 4.

5. **SUBJECT:** RACT applicability thresholds.

COMMENTER: Dominion

TEXT: Dominion also takes exception with the potential-to-emit thresholds for VOC and NO_x sources proposed under 9 VAC 5-40-300 and 310. The threshold for RACT applicability in the new emissions control areas is proposed at 25 tons per year, which is the current level set for the northern Virginia severe ozone nonattainment area under the one-hour standard. Given that these areas are not designated nonattainment under either standard, Dominion believes the RACT applicability threshold for these areas should be set at a less restrictive level, such as the current 100 ton-per-year VOC RACT threshold for moderate areas.

RESPONSE: As discussed in the response to comment 2, we agree that a threshold of 100 tpy is a more appropriate NO_x RACT threshold.

COMMONWEALTH OF VIRGINIA
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INTRODUCTION

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emission standards for VOCs prescribed in Article 37 (9 VAC 5-40-5200 et seq.) of Part II of 9 VAC 5 Chapter 40. These localities are subject to Article 37 by state law. [footnote to 9 VAC 5-20-206 1 c]

4. In Article 4 of Chapter 40, the Northeast and Western Emissions Control Areas are added to the applicability section of the standard for VOCs. [9 VAC 5-40-300 B]
5. In Article 4 of Chapter 40, the Northeast and Western Emissions Control Areas, with dates by which sources are to notify the board of their applicability status, commit to making a VOC RACT determination, and provide a determination and compliance schedule, are added. The theoretical potential to emit for these areas is 25 tons per year or greater. [9 VAC 5-40-300 C 4]
6. In Article 4 of Chapter 40, the Northeast and Western Emissions Control Areas are added to the applicability section of the standard for NO_x. The theoretical potential to emit for major sources in these areas is 25 tons per year or greater. [9 VAC 5-40-310 C]
7. In Article 4 of Chapter 40, the Northeast and Western Emissions Control Areas, with dates by which sources are to notify the board of their applicability status, commit to making a NO_x RACT determination, and provide a determination and compliance schedule, are added. [9 VAC 5-40-310 D and E]
8. In Article 37 of Chapter 40, the applicability section is revised to clarify what localities must comply with or be exempt from certain requirements. This is necessary for consistency with Virginia law. [9 VAC 5-40-5200 B]
9. In Article 37 of Chapter 40, a minor correction has been made to a reference to kerosene and fuel oil. [9 VAC 5-40-5200 C]
10. In Article 37 of Chapter 40, 9 VAC 5-40-5220 F 3 has been deleted, as the information has been moved to the applicability section of 9 VAC 5-40-5200 B.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Harrisonburg, Virginia on August 26, 2003. Three persons attended the hearing, none of whom offered testimony; and seven additional written comments were received during the public comment period. As required by law, notice of this hearing was given to the public on or about July 14, 2003 in a number of local newspapers, including the Harrisonburg Daily News Record. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT:** Support for the proposal.

COMMENTER: Virginia Department of Transportation

TEXT: The Virginia Department of Transportation supports the proposal, and believes that it will help improve Virginia's air quality. In addition, the proposed regulations will ensure successful development of Early Action Plans in both Roanoke and Winchester, and will help in the development of the 8-hour Fredericksburg nonattainment area State Implementation Plan. We also encourage the expansion of open burning regulations to new VOC emissions control areas. Consistent statewide-implemented regulations will increase awareness of and compliance with such regulations.

RESPONSE: Support for the proposal is appreciated.

2. **SUBJECT:** Reasonably Available Control Technology (RACT)

COMMENTER: U.S. Environmental Protection Agency

TEXT: U.S. EPA supports these amendments with the following concerns. The proposed amendments impose new RACT requirements on major sources in newly designated emission control areas. These RACT requirements impose both presumptive standards for certain categories of sources as well as case-by-case control technology determinations for individual sources. Presumptive NO_x RACT sources will be required to submit a plan for complying with the emission standards by January 2004. There is no specific date required for VOC or NO_x case-by-case resources to submit a similar plan other than three months after promulgation of the regulation. All affected sources must comply with RACT by November 15, 2005.

It is EPA's experience that the final implementation and state implementation plan (SIP) approval of case-by-case RACT determinations are often subject to unplanned delays that may extend well beyond regulatory or planning deadlines, even where RACT has been a statutory requirement under the Clean Air Act. As you know, RACT is voluntary for the Roanoke and Northern Shenandoah Valley areas as part of the local measures needed to demonstrate early attainment of the 8-hour ozone standard. The Early Action Compacts (EACs) obligate these areas to submit a complete SIP revision to EPA by December 31, 2004, with implementation of local control measures no later than December 31, 2005.

This means that if the EAC areas take credit for RACT in the EAC SIP, the RACT plans must be fully adopted by the date the SIP is due. This timing is critical so that EPA may deem the EAC SIPs complete and to allow EPA sufficient time to publish a second deferral of the EAC area nonattainment designations and fully approve the EAC SIPs no later than September 30, 2005.

EPA commends efforts to expand RACT requirements to EAC areas because it will result in quantifiable emission reductions and will represent a substantial investment in local air quality. The EAC program was established on the presumption that EAC areas would adopt local control measures to reduce emissions, both as an investment in their own air quality and to advance early attainment of the 8-hour ozone standard. Therefore, EPA strongly encourages the adoption of these RACT regulations as a critical element of the EAC plan. Nevertheless, EPA cautions that realistic timeframes be considered when adopting these regulations, particularly for case-by-case RACT, taking into account the number and complexity of potentially affected sources. On November 14, 2002 EPA issued guidance on the EAC program that sets forth critical milestones that must be met in order to retain eligibility in the EAC program. If the December 2004 milestone for submitting a complete EAC SIP to EPA is missed, the areas will no longer be eligible to continue in the early reduction program and the designation deferral will have to be withdrawn.

RESPONSE: We agree that realistic timeframes must be considered when adopting regulations. It does not appear that RACT determinations for VOC and NO_x sources 25 tons per year and over could be prepared, submitted, and approved in a timely manner. The potential benefits associated with these determinations would be far outweighed by jeopardizing the EACs as a whole. However, we also believe that imposing RACT on NO_x sources 100 tons and over can be feasibly finalized in the necessary timeframe, and would provide necessary reductions for ensuring the plans' success. The regulation has been revised to remove VOC RACT for the new areas and to require NO_x RACT on sources 100 tons and over in the new areas.

3. **SUBJECT:** Designation of nonattainment areas/EAC participation

COMMENTER: Albemarle County

TEXT: It appears that Albemarle County was never notified regarding participation in an EAC. The two EACs formed are not connected geographically to Albemarle County. The list of localities does not include such municipalities as Charlottesville, Harrisonburg, and Staunton, which appears to conflict with the implied intention of clustering these areas geographically. Albemarle County was not recommended for nonattainment status by Virginia. Currently, there is no monitoring data that suggests that it is not meeting the 8-hour standard. Therefore, we do not feel that Albemarle County should be grouped with any areas proposed for nonattainment. Albemarle County does not wish to participate with any EAC at this time.

RESPONSE: At the time the original proposal was made, it was not certain which localities would be formally designated nonattainment for the 8-hour standard. The proposal was designed to be as inclusive as possible, to allow for the potential inclusion of areas--even those which Virginia does not believe should be designated nonattainment, and were not recommended by the state for inclusion--in order to provide the ability to begin implementing control plans if necessary. We thought it prudent to develop the proposal as a worst-case scenario with the assumption that a number of these localities would eventually be removed from the list. Based on continuing discussion with EPA, we are reasonably certain that Albemarle County will not be designated nonattainment for the 8-hour standard, and are therefore removing it from the regulation.

4. **SUBJECT:** Applicability; designation of nonattainment areas.

COMMENTER: Dan River, Dominion, Merck, Virginia Manufacturers Association

TEXT: The proposal would designate additional areas of the Commonwealth as VOC and NO_x emission control areas. As a result, existing sources of VOCs and NO_x would become subject to additional emission control requirements set forth in 9 VAC 5 Chapter 40. In many instances this may require sources to retrofit with additional emission control equipment or to fundamentally alter process operations to meet new emission limits.

Historically, areas of the Commonwealth have been designated as VOC and NO_x emission control areas because the areas are or had at one time not met the national ambient air quality standard for ozone. The rationale for designating these areas as VOC and NO_x emission control areas and for subjecting sources in these areas to additional emission control requirements is straightforward. VOCs and NO_x contribute to the formation of ozone. Thus, in areas of the Commonwealth where ozone formation must be reduced to meet the ozone NAAQS, additional limitations on VOC and NO_x emissions are warranted. However, such costly additional controls are not warranted in areas of the Commonwealth that meet the ozone NAAQS.

The preamble to the proposed regulations states that the "proposed amendments are being made to implement a program established by EPA for areas potentially designated as nonattainment under the 8-hour ozone standard. This program enables such areas to avoid the nonattainment designations through early reduction credits." The Roanoke and Winchester areas have entered into memoranda of agreement with EPA to implement voluntary early reduction programs. To the extent that the proposed regulations are necessary to assist these areas in their early reduction efforts, we support the proposed regulations.

Unfortunately, the proposed regulations go beyond the stated purpose of providing tools to the Roanoke and Winchester areas to implement their early reduction compacts with EPA. These two areas entered into the early reduction compacts because the department and EPA agree that these areas do not meet the ozone NAAQS and, therefore, it is a virtual

certainty that absent the early reduction program, EPA would designate these areas as 8-hour ozone nonattainment areas. However, this is not the case for several other localities also included in the proposed new VOC and NO_x emission control areas (Albemarle, Augusta, Rockingham, and Pittsylvania counties).

The proposed regulations include in the new VOC and NO_x emission control areas additional counties the department believes should not be designated as nonattainment. Thus, there is a substantial possibility that EPA will not designate these additional counties as ozone nonattainment areas. Moreover, these additional counties have not been and, in all likelihood, never will be, admitted by EPA into its early reduction program because the time for entering into such compacts with EPA has long passed. In short, it would be totally unnecessary to saddle manufacturers and other businesses in those counties with the costly additional emission control requirements if the counties cannot enter an early reduction compact and are, in fact, never designated nonattainment.

We urge the department to revise the regulations to apply only to those localities in the Roanoke and Winchester areas that have entered into an early reduction compact, and to remove those additional counties that are not. It would be a costly mistake to subject industry to emission controls that are unwarranted if EPA does not designate these counties as nonattainment.

RESPONSE: As discussed in the response to comment 3, the original proposal was designed as a worst-case scenario. At the time the original proposal was made, it was uncertain which localities would be formally designated nonattainment for the 8-hour standard. The proposal was intentionally as inclusive as possible, to allow for the potential inclusion of areas--even those which Virginia does not believe should be designated nonattainment, and were not recommended by the state for inclusion--in order to provide the ability to begin implementing control plans if necessary. In order for new nonattainment areas to minimize their nonattainment areas baseline and to be able to take credit for emission reductions as soon as possible, localities with the potential to be designated nonattainment were included, even if they did not qualify for or wish to participate in an EAC.

It is now reasonably certain that the counties of Albemarle, Augusta, Caroline, Fauquier, Madison, Page, Pittsylvania, and Rockingham will not be designated nonattainment for the 8-hour standard, and therefore they are being removed from the regulation. On the other hand, since the Northeastern Virginia Emissions Control Area (since revised to be titled the Fredericksburg Emissions Control Area) will very likely be designated nonattainment, they will remain as a new emission control area subject to the provisions of this regulatory action. This will be part of their upcoming nonattainment plan, not an EAC.

Making these localities subject to the VOC standards now, rather than waiting for the formal nonattainment designation, has a number of advantages. First, when these areas become designated nonattainment, they will have to prepare nonattainment area SIPs with legally enforceable control measures and a demonstration that implementation of these measures will result in the localities achieving attainment. Implementation of the VOC

standards would be the primary recommended strategy once the final designations are made. By implementing these strategies now, two years of regulatory development will be saved. The localities will be able to make emission reductions that will in turn reduce the baseline of emissions that they must later reduce. They will also be able to take credit for these measures in their nonattainment plans.

There are no benefits from waiting until the formal designation process is complete to begin developing controls for the Fredericksburg area. Apart from planning considerations, not acting now will subject the citizens of the area to unacceptable pollution levels for an additional two to three years. Nor would the regulated community benefit: the later the regulations are implemented, the greater the baseline from which reductions must be met with less time in which to accomplish them.

5. **SUBJECT:** Inclusion of localities.

COMMENTER: Dominion

TEXT: Dominion fully agrees with the stated intended purpose of the rule change to enable "areas to avoid nonattainment designation through currently reduction credits." Nevertheless, we urge the department to amend the regulations so that those areas that can no longer qualify for the early reduction program not be designated in the proposed rule for inclusion on the list of new VOC and NO_x control areas.

As stated in the agency background document, the list of potentially affected localities is overly inclusive. As further explained in the Virginia Register notice, "the proposed list of new control areas is believed to be more inclusive than what the final designations will comprise. If this is the case, the board plans to drop some of the areas from the current proposed list in the final stage of these proposed regulations . . . the purpose of designating other localities as emissions control areas with these proposed changes is for timing and planning purposes. The department anticipates that the time these proposed regulations become effective will coincide with about the time nonattainment designations will be made. And, if these areas are designated as nonattainment, the regulatory authority will exist to start taking necessary measures without having to promulgate a new set of amendments."

Dominion certainly applauds the department's foresight and efforts to streamline regulatory actions. However, Dominion cannot endorse the premature inclusion into VOC and NO_x control areas those areas not yet officially designated, and more importantly, those not even exhibiting violations of the standard. Data collected and reported by the department show that the design values over the 2000-2002 period for monitoring locations in Fauquier, Caroline, and Page counties are below the 85-ppb threshold for nonattainment of the 8-hour ozone standard. In fact, the department specifically indicated that "Caroline and Fauquier counties could be removed from the nonattainment list" in its submittal of recommended nonattainment areas to EPA.

Although the ozone season in Virginia does not officially end until October 31, ozone data collected through mid-August 2003 reflect a reasonable possibility that the 2001-2003 design values, which EPA will use in making the final designation determinations, will remain below the 85-ppb threshold. In addition, significant NO_x reductions from the regional NO_x SIP call beginning next year are anticipated to effect additional air quality improvement throughout the Commonwealth which should further enhance the ability of these areas to maintain attainment of the ozone standard and assist areas that are marginally above the standard to achieve attainment as well.

In light of the severe economic consequences that could be required of sources subject to the potential expansion of the VOC and NO_x control areas, especially when they are not needed, Dominion urges the department to drop the overly inclusive areas. It is important that these rules be developed as efficiently as possible, but they must also be developed in a manner that minimizes as much as possible the economic impacts on the Commonwealth.

RESPONSE: As discussed in the responses to comments 3 and 4, the original proposal was designed as a worst-case scenario. It is better to have a more inclusive program and then remove various unneeded provisions than to begin with the minimum and be forced to bring significant new provisions to the board for final approval. It is reasonably certain that the counties of Albemarle, Augusta, Caroline, Fauquier, Pittsylvania, and Rockingham will not be designated nonattainment, and they are therefore being removed from the list. The affected portions of Madison and Page counties are rural (portions of Shenandoah National Park) with no sources to control, and are also being removed from the list. On the other hand, since the Fredericksburg Emissions Control Area will likely be designated nonattainment, it will remain as a new emission control area. This regulatory action will become part of their upcoming nonattainment plan, not an EAC. Making these localities subject to the VOC standards now, rather than waiting for the formal nonattainment designation, has a number of advantages, as discussed in the response to comment 4.

5. **SUBJECT:** RACT applicability thresholds.

COMMENTER: Dominion

TEXT: Dominion also takes exception with the potential-to-emit thresholds for VOC and NO_x sources proposed under 9 VAC 5-40-300 and 310. The threshold for RACT applicability in the new emissions control areas is proposed at 25 tons per year, which is the current level set for the northern Virginia severe ozone nonattainment area under the one-hour standard. Given that these areas are not designated nonattainment under either standard, Dominion believes the RACT applicability threshold for these areas should be set at a less restrictive level, such as the current 100 ton-per-year VOC RACT threshold for moderate areas.

RESPONSE: As discussed in the response to comment 2, we agree that a threshold of 100 tpy is a more appropriate NO_x RACT threshold.

