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# PROPOSED REGULATIONS

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For information concerning Proposed Regulations, see Information Page.

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## 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.

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## STATE AIR POLLUTION CONTROL BOARD

**Title of Regulation: Regulations for the Control and Abatement of Air Pollution (Rev. D00): 9 VAC 5-80-2000, 9 VAC 5-80-2010, 9 VAC 5-80-2020, 9 VAC 5-80-2030, 9 VAC 5-80-2040, 9 VAC 5-80-2050, 9 VAC 5-80-2060, 9 VAC 5-80-2070, 9 VAC 5-80-2080, 9 VAC 5-80-2090, 9 VAC 5-80-2110, 9 VAC 5-80-2120, 9 VAC 5-80-2150, 9 VAC 5-80-2180, and 9 VAC 5-80-2190; adding 9 VAC 5-80-2200, 9 VAC 5-80-2210, 9 VAC 5-80-2220, 9 VAC 5-80-2230, and 9 VAC 5-80-2240; repealing 9 VAC 5-80-2100 and 9 VAC 5-80-2160).**

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

**Public Hearing Date:** November 27, 2001 - 9 a.m.

Public comments may be submitted until 4:30 p.m., December 21, 2001.

(See Calendar of Events section for additional information)

**Agency Contact:** Karen G. Sabasteanski, Policy Analyst, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4426, FAX (804) 698-4510, toll-free 1-800-592-5482, or (804) 698-4021/TTY.

**Basis:** Section 10.1-1308 of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. 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 regulation is to require the owner of the proposed new or expanded facility to provide such information as may be needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality in order to protect public health and welfare. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The proposed amendments are being made to bring the regulation into compliance with federal regulations and policies with regard to designation of nonattainment areas for the 8-hour ozone air quality standard.

### **Substance:**

1. The regulation has been revised to include a new offset ratio in response to imposition of the new 8-hour ozone standard. One of the requirements of the new source review program for nonattainment areas is that a facility owner obtain emission reductions from existing sources. The emission reductions must offset the increases from the proposed facility by the ratio specified in the Clean Air Act for that particular nonattainment classification. The current offset ratio

specifications are 1.1 to 1 for areas classified as marginal, 1.15 to 1 for moderate areas, 1.2 to 1 for serious areas, and 1.3 to 1 for severe areas. For the new 8-hour ozone standard, the existing offset ratios based on the above classification system are likely to be retained, and possibly an offset ratio of 1 to 1 will be added. The 1-to-1 ratio will also apply to areas designated nonattainment for pollutants other than ozone (such as PM<sub>2.5</sub>) for which there is no classification system.

2. The regulation has been revised to remove federal enforceability of certain provisions that should be enforceable only by the state. This will prevent terms and conditions that are state-only enforceable from being designated as federally enforceable in the permit, thus preventing them from being enforced by EPA or citizens through the federal Clean Air Act.

3. The regulation has been revised to clarify that the regulation applies to the construction or reconstruction of a new major stationary source or a major modification to a major stationary source, if the source or modification would be major for the pollutant for which the area is designated as nonattainment. In order to achieve this distinction, all references to hazardous air pollutants, which are regulated elsewhere, have been eliminated.

4. The regulation has been revised to add or modify definitions for "applicable federal requirement," "complete application," "emissions cap," "enforceable as a practical matter," "federally enforceable," "fugitive emissions," "major new source review," "minor new source review," "new source review program" "public comment period," "state enforceable," "state operating permit program," and "synthetic minor" in order to be consistent with other new source review regulations.

5. The regulation has been revised in order to make the following provisions consistent with other new source review regulations: general, applications, application information required, and standards and conditions for granting permits.

6. The regulation has been revised to delete the following provisions in order to be consistent with other new source review regulations: circumvention and reactivation and permanent shutdown.

7. The regulation has been revised to add the following sections in order to be consistent with other new source review regulations: changes to permits, administrative permit amendments, minor permit amendments, significant amendment procedures, and reopening for cause.

8. The regulation has been revised to make minor administrative revisions and corrections elsewhere in the regulation as necessary.

### **Issues:**

1. Public: There are no disadvantages to the public associated with the proposed action. Advantages to the public

include a clearer understanding of what is required of a permit applicant, and thereby more efficient issuance of more accurate permits. It will also reduce the possibility of implementation of unnecessarily restrictive requirements.

2. Department: There are no disadvantages to the department associated with the proposed action. Advantages to the department include a clearer understanding of what is required of a permit applicant, and thereby more efficient issuance of more accurate permits.

Localities Particularly Affected: The proposed regulation amendments affect sources located in nonattainment areas. Currently, the Commonwealth has one area that does not meet the 1-hour federal standard for ozone: the Northern Virginia Ozone Nonattainment Area, which consists of Arlington County, Alexandria City, Fairfax County, Fairfax City, Loudoun County, Falls Church City, Prince William County, Manassas City, Stafford County, and Manassas Park City.

The areas to be covered by the new 8-hour standard are yet to be determined; however, the state has submitted a list of recommended nonattainment areas to EPA. The recommended areas include the Frederick County Nonattainment Area (Frederick County, City of Winchester); the Fredericksburg Nonattainment Area (Caroline, Spotsylvania, and Stafford Counties, City of Fredericksburg); the Northern Virginia Nonattainment Area (Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford Counties, Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park); the Shenandoah National Park Nonattainment Area (the portions of the park located in Page and Madison counties); the Roanoke Nonattainment Area (Botetourt and Roanoke Counties, Cities of Roanoke and Salem, Town of Vinton); Hampton Roads Nonattainment Area (James City and York Counties, Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg).

This list is currently undergoing review by EPA, which, in accordance with the Clean Air Act, has the final authority for determining nonattainment area designations.

Public Participation: The department is seeking comment on the proposed regulation and the costs and benefits of the proposal.

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 Air Pollution Control Board (the board) proposes to establish new emission offset ratios for the sources in the potential eight-hour ozone standard nonattainment areas, and in the potential nonattainment areas for several other pollutants, and proposes to designate certain term and conditions in emission permits as state only enforceable.

Estimated economic impact. The board proposes to establish a new emission offset ratio in response to imposition of the new eight-hour ozone standard by the Environmental Protection Agency (EPA). Currently, the Department of Environmental Quality (the agency) is implementing the one-hour ozone standard, which was established in 1979. When the concentrations of ozone in the ambient air exceed the one-hour standard, the area is considered to be out of compliance and is designated as nonattainment. There are five different nonattainment area classifications for one-hour ozone standard called marginal, moderate, serious, severe, and extreme. Marginal areas are subject to the least stringent requirements while the other classes are subject to successively more stringent requirements.

The offset requirements are designed to control total emissions and improve air quality in nonattainment areas. Construction or reconstruction of new major stationary sources and modifications to existing major stationary sources in these areas are subject to offset requirements. The total tonnage of increased emissions of air pollutant from the new or modified source must be offset by an equal or greater reduction in the emissions of the same source or other sources. Under the current regulations, the offset ratios are applicable to volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>), which are the two precursors of ozone. The ratio of total emission reductions of VOC or NO<sub>x</sub> to total increased emissions of the same pollutant varies among the one-hour ozone standard nonattainment area classifications. The current offset ratio for marginal areas is 1.1 to 1, for moderate areas is 1.15 to 1, for serious areas is 1.2 to 1, and for severe areas is 1.3 to 1.

Present offset ratios are applicable to only VOC and NO<sub>x</sub> emissions and classified ozone nonattainment areas. The agency believes that the limitations of the current language in the regulations for the offset ratios are likely to be a problem in the near future because of the EPA's actions to implement the new eight-hour standard. The eight-hour standard was established in 1997 and is stricter than the one-hour standard. The new standard has been subject to litigation, which has been recently addressed by the U.S. Supreme Court.<sup>1</sup> EPA prevailed on most issues with the exception of its implementation policy, which included a classification scheme for new nonattainment areas according to the eight-hour standard. The agency expects that areas not in compliance with the new standard will be designated as nonattainment, but a specific classification may not be assigned. The current language is unclear what offset ratio would be applicable if an area is designated nonattainment for the new eight-hour-ozone standard for which an area classification is not likely to be established. According to the agency, one-to-one offset ratio is likely to be applied because of the provisions of the

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<sup>1</sup> Source: The Agency

federal Clean Air Act, which does not include any other offset ratios.

Based on the expected implementation of the new eight-hour standard by EPA and the provisions of the Clean Air Act, the board proposes to include an offset ratio of 1 to 1 for VOC and NO<sub>x</sub> emissions in unclassified ozone nonattainment areas. Currently, there is no designated nonattainment area for the new ozone standard in Virginia. Northern Virginia is designated nonattainment for the one-hour standard, and is likely to be designated as nonattainment for the eight-hour standard as well. In addition to the Northern Virginia, several more areas are expected to be designated as nonattainment under the eight-hour standard.

The proposed new offset ratio will reduce the ambiguity on the required emission offsets from sources located in the potential eight-hour standard nonattainment areas. Because of this ambiguity in current regulations, there is a chance that emission offsets cannot be enforced. The proposed amendments will make it possible to enforce emission offsets from major sources in potential nonattainment areas. Required emission offsets are likely to increase the compliance costs of major sources significantly if they choose to undertake construction, reconstruction, or modification. The potential compliance costs to all of the sources cannot be accurately estimated. At the same time, compliance costs per ton of emissions in the new nonattainment areas is expected to be lower than the unit compliance costs associated with the one-hour ozone standard. This is because emission offsets can be obtained from a larger number of sources.

A firm's incentives to locate in a geographic area may be altered. Localities that may be designated as nonattainment for the eight-hour standard are known with some degree of uncertainty. With the proposed changes, the sources in these areas will also know they will be subject to the offset requirements. Since emission offsets increase compliance costs, the potential new sources will find it more profitable to construct in other areas that are unlikely to be designated as nonattainment. This may have a negative impact on the growth of business activity in potential nonattainment areas.

The effects on air quality are expected to be significant. The emissions from the existing sources will be capped by the proposed offset requirement. If a source is to increase emissions because of a modification, it will have to provide an equal reduction from other units internally or from other sources in the nonattainment area. Also, potential new sources will be provided incentives to locate in other areas. This will help reduce growth of emissions from major sources. Prevention of air quality deterioration with the proposed offsets is likely to have a positive impact on health of citizens living in potential nonattainment areas.

Finally, less ambiguous language is expected to reduce potential dispute and litigation costs that may be incurred in the future due to the uncertainty in the present regulations.

The board also proposes to establish new emission offset ratios for criteria pollutants<sup>2</sup> other than VOC and NO<sub>x</sub> in

response to the potential designation of particulate matter nonattainment areas by EPA. As mentioned before, the current offset ratios are applicable only to VOC and NO<sub>x</sub> emissions and only to classified ozone nonattainment areas. However, emission reductions of other criteria pollutants from new or modified sources may be required in the future. The current language is unclear what offset ratio would be applicable if an area is designated nonattainment for one of the other criteria pollutants. Based on the provisions of the Clean Air Act which states that non-ozone nonattainment areas must obtain offsets equal to or greater than the amount emitted, the agency expects EPA to establish at least 1 to 1 offset ratio for other pollutant nonattainment areas. Thus, it is proposed to require at least 1 to 1 offsets from sources located in the other pollutant nonattainment areas. No area in Virginia is currently designated or expected to be designated nonattainment for any of these pollutants.<sup>3</sup> Thus, this proposed change is not expected to have any immediate economic impact, but likely to increase compliance costs, discourage new sources locating in, improve air quality, and reduce potential dispute and litigation costs if an area is designated nonattainment for the other pollutants in the future.

Moreover, the proposed amendments designate "state only enforceable" terms and conditions as such in the regulations. A term or condition is state only enforceable if the authority is derived from state regulations. Examples include odor and toxic regulations for new and existing sources. These terms and conditions are enforceable by the Air Pollution Control Board or the agency. Under the current regulations, all terms and conditions including those that should be enforceable by the state are subject to federal enforcement by EPA and citizens through the Clean Air Act. With the proposed language, state-only terms and conditions can be enforced only through the state courts.

The proposed change is likely to prevent the agency and the permit holders from being sued in federal courts for the state only enforceable terms and conditions. If the dispute were with regard to the content of a permit, then the agency would bear the litigation costs. If the issue were compliance with a permit, then the permit holder would incur the costs. Under the assumption that the litigation costs are lower in the state courts relative to federal courts, the proposed change may reduce potential litigation costs to the agency or to the permit holder if a dispute arises. On the other hand, some citizens may prefer to pursue the permit terms and conditions in federal courts rather than in state courts. For those citizens, the proposed regulations will represent a loss of choice. The agency is not aware of any litigation where state enforceable terms are tried in federal courts. Furthermore, this proposed change will make this regulation consistent with the minor source review regulations which designate the same terms and conditions as state only enforceable.

#### Businesses and Entities Affected

The number of sources located in areas that may be designated as nonattainment for the new eight-hour ozone

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<sup>2</sup> Criteria pollutants are volatile organic compounds, nitrogen oxides, particulate matter, sulfur dioxide, carbon monoxide, and lead.

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<sup>3</sup> Source: The agency

standard is expected be between 13 and 45.<sup>4</sup> These sources currently operate under the prevention of significant deterioration program. Based on the data from this program, only one source during the last five year undertook a new construction or modification. Thus, a small number of sources over a five-year period are expected to be affected.

Localities particularly affected. The areas to be covered by the new eight-hour ozone standard are yet to be determined; however, the agency has submitted a list of recommended nonattainment areas to EPA. The recommended areas include the Frederick County Nonattainment Area (Frederick County, City of Winchester); the Fredericksburg Nonattainment Area (Caroline, Spotsylvania, and Stafford Counties, City of Fredericksburg); the Northern Virginia Nonattainment Area (Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford Counties, Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park); the Shenandoah National Park Nonattainment Area (the portions of the park located in Page and Madison counties); the Roanoke Nonattainment Area (Botetourt and Roanoke Counties, Cities of Roanoke and Salem, Town of Vinton); and Hampton Roads Nonattainment Area (James City and York Counties, Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg). Major emission sources located in these areas may particularly be affected. However, this list is currently undergoing review by EPA, which in accordance with the Clean Air Act, has the final authority for determining nonattainment area designations.

Projected impact on employment. The proposed offset requirements are likely to discourage new sources locating in potential nonattainment areas. This is expected to reduce the number of new jobs that may be created in these localities. However, the job seekers are likely to take jobs elsewhere in a strong labor market. Thus, the net impact on employment cannot be determined.

Effects on the use and value of private property. The value of major emission sources in the potential nonattainment areas may decrease if potential compliance costs exceed the potential cost savings from less litigation and disputes. Prevention of deterioration in air quality by the proposed emission offsets may have a positive impact on land values in potential nonattainment areas.

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 proposed amendments (i) revise the emission reduction offset ratio; (ii) provide for state-only permit terms and conditions; (iii) clarify the regulation's applicability; and (iv) make the regulation consistent with the other new source review regulations.*

## 9 VAC 5-80-2000. Applicability.

A. The provisions of this article apply to ~~the construction or reconstruction of any person seeking to construct or reconstruct any new major stationary source or to make a major modification to a major stationary source, if the source or modification is or would be major for the pollutant for which the area is designated as nonattainment~~

B. The provisions of this article apply in nonattainment areas.

C. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not commenced on the source or modification.

D. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this article and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

E. Unless specified otherwise, the provisions of this article ~~are applicable to various sources~~ apply as follows:

1. Provisions referring to "sources," "new and/or modified sources" or "stationary sources" ~~are applicable~~ apply to the construction, reconstruction or modification of all major stationary sources and major modifications.

2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of ~~9 VAC 5-80-10 Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), or Article 8 (9 VAC 5-80-1700 et seq.)~~ of this part.

3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-2020 E.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

## 9 VAC 5-80-2010. Definitions.

A. As used in this article, all words or terms not defined here shall have the meanings given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

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<sup>4</sup> Source: The agency

B. For the purpose of this article, 9 VAC 5-50-270 and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

*"Actual emissions"* means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The board shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

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

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

a. The applicable standards set forth in 40 CFR Parts 60 and 61;

b. Any applicable ~~State~~ Implementation Plan emissions limitation including those with a future compliance date; or

c. The emissions ~~rate~~ limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

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

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

b. Any limit or condition in any construction permit issued under the new source review program or in any operating

permit issued pursuant to the state operating permit program.

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

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing §112 of the federal Clean Air Act.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either §504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9 VAC 5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9 VAC 5-80-1700 et seq.) of this part.

*"Begin actual construction"* means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

*"Building, structure, facility, or installation"* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if

they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9 VAC 5-20-21).

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

- a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

"Emissions cap" means any limitation on the rate of emissions of any regulated air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the federal Clean Air Act.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

- a. Are permanent;
- b. Contain a legal obligation for the owner to adhere to the terms and conditions;
- c. Do not allow a relaxation of a requirement of the Implementation Plan;
- d. Are technically accurate and quantifiable;
- e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the Implementation Plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9 VAC 5-80-2050 and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, ~~including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or this chapter, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program.~~ and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

- a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.
- b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.
- c. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.
- d. Limitations and conditions that are part of an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act.
- e. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.
- f. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.
- g. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.
- h. Individual consent agreements that EPA has legal authority to create.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

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

"Lowest achievable emissions rate" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

*"Major modification"*

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any *qualifying nonattainment* pollutant ~~subject to regulation under the federal Clean Air Act.~~

b. Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair and replacement;

(2) Use of an alternative fuel or raw material by a stationary source which:

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter;

(3) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

*"Major new source review (major NSR)" means a program for the preconstruction review of changes that are subject to review as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.*

*"Major stationary source"*

a. Means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, (i) 100 tons per year or more of any *nonattainment* pollutant ~~subject to regulation under the federal Clean Air Act~~, (ii) 50 tons

per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9 VAC 5-20-204, or (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9 VAC 5-20-204; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants.

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under § 111 or § 112 of the federal Clean Air Act.

*"Minor new source review (minor NSR)" means a program for the preconstruction review of changes that are subject to review as new or modified sources and that do not qualify as new major stationary sources or major modifications under Article 7 (9 VAC 5-80-1400 et seq.), Article 8 (9 VAC 5-80-1700 et seq.) or Article 9 (9 VAC 5-80-2000 et seq.) of this part.*

*"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are part of the applicable State Implementation Plan.*

*"Net emissions increase"*

a. Means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(2) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9VAC 5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the change specified in subdivision a (1) of this definition commences and the date that the increase specified in subdivision a (1) of this definition occurs; and

(2) The board has not relied on it in issuing a permit for the source pursuant to this chapter which permit is in

effect when the increase in actual emissions from the particular change occurs.

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is federally and state enforceable at and after the time that actual construction on the particular change begins;

(3) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the State Implementation Plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

*"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.*

*"Nonattainment pollutant" means, within an nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.*

*"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.*

*"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air*

quality, and the preliminary decision of the board regarding the permit application.

"Qualifying pollutant" means, with regard to a major stationary source, any pollutant emitted in such quantities or at such rate as to qualify the source as a major stationary source.

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of ~~a state~~ an implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the ~~State~~ Implementation Plan for such area.

"Reconstruction" means when the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of subdivisions a through c of this definition. A reconstructed stationary source will be treated as a new stationary source for purposes of this article.

- a. The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new facility.
- b. The estimated life of the facility after the replacements compared to the life of a comparable entirely new facility.
- c. The extent to which the components being replaced cause or contribute to the emissions from the facility.

"Regulated air pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound;
- b. Any pollutant for which an ambient air quality standard has been promulgated;
- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act;
- d. Any pollutant subject to a standard promulgated under or other requirements established under §112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under of 40 CFR Part 63; or
- e. Any pollutant subject to a regulation adopted by the board.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions must be specific, well defined, quantifiable, and ~~impact~~ affect the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major

modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

- a. Ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy

- b. Other nonattainment areas.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9 VAC 5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

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

"Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

**9 VAC 5-80-2020. General.**

A. No owner or other person shall begin actual construction, reconstruction or modification of any major stationary source

or major modification without first obtaining from the board a permit to construct and operate such source.

B. No owner or other person shall relocate any emissions unit ~~subject to the provisions of 9 VAC 5-20-160 from one stationary source to another~~ without first obtaining from the board a permit to relocate the unit.

C. The board may combine the requirements of and the permits for emissions units within a stationary source subject to ~~9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of this part, and this article~~ the new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by ~~9 VAC 5-80-10, Article 8 of this part, and this article~~ any provision of the new source review program be combined into one application.

D. ~~The board may incorporate the terms and conditions of a state operating permit into a permit issued pursuant to this article. The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed.~~

E. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if (i) it is derived from or is designed to implement Article 2 (9 VAC 5-40-130 et seq.) or Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 or Article 2 (9 VAC 5-50-130 et seq.) or Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50 or (ii) it is designated in the proposed permit as provided in subdivision 2 of this subsection and public review of the designation takes place under 9 VAC 5-80-2070.

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Failure to mark a term or condition as state-only enforceable shall not render it federally enforceable. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

F. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

**9 VAC 5-80-2030. Applications.**

A. A single application is required identifying at a minimum each ~~emissions point within the~~ emissions unit subject to the provisions of this article. The application shall be submitted according to procedures ~~approved by~~ acceptable to the board. However, where several emissions units are included

in one project, a single application covering all units in the project may be submitted. ~~A separate application is required for each location.~~

~~B. A separate application is required for each stationary source.~~

~~B. C.~~ For projects with phased development, a single application should be submitted covering the entire project.

~~C. D.~~ Any application form, report, or compliance certification submitted to the board shall be signed by a responsible official. ~~A responsible official is defined as follows: comply with the provisions of 9 VAC 5-20-230.~~

1. For a business entity such as a corporation, association or cooperative, a responsible official is either:

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

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

2. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.

3. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

D. Any person signing a document under subsection C of this section shall make the following certification:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

E. ~~As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all~~

local ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

## 9 VAC 5-80-2040. *Application information required.*

A. *The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of new and modified sources.*

~~A. B.~~ Each application for a permit shall include such information as may be required by the board to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emissions standards which are applicable. The information required shall include, but is not limited to, the following:

~~1. That specified on applicable permit forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations. Completion of these forms serves as initial registration of new and modified sources. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.~~

~~2. A description of the source's processes and products (by Standard Industrial Classification Code).~~

~~3. All emissions of regulated air pollutants.~~

~~a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit or group of emissions units to be covered by the permit.~~

~~b. Emissions shall be calculated as required in the permit application form or instructions.~~

~~c. Fugitive emissions shall be included in the permit application to the extent quantifiable.~~

~~4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.~~

~~5. Actual emission rates in tons per year and other information as may be necessary to determine the net emissions increase of actual emissions.~~

~~6. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.~~

~~7. Identification and description of air pollution control equipment and compliance monitoring devices or activities.~~

~~8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.~~

~~9. Calculations on which the information in subdivisions 3 through 8 of this subsection are based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.~~

~~2.~~ 10. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the *stationary source or emissions unit*, including the submission of measured air quality data at the

proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.

~~3.~~ 11. For major stationary sources, the location and registration number for all stationary sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth.

4. 12. For major stationary sources, the analyses required by 9 VAC 5-80-2090 2 shall be provided by the applicant. Upon request, the board will advise an applicant of the reasonable geographic limitation on the areas to be subject to an analysis to determine the air quality impact at the proposed source.

B. C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

## 9 VAC 5-80-2050. ~~Standards/conditions~~ **Standards and conditions for granting permits.**

A. No permit will be granted pursuant to this article unless it is shown to the satisfaction of the board that the source will ~~be designed, built and equipped to operate without causing a violation of the applicable provisions of these regulations and that comply with~~ the following standards and conditions ~~have been met:~~

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) ~~and with emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).~~

2. The source shall be designed, built and equipped to operate without ~~preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any the applicable ambient air quality standard provisions of regulations of the board or the applicable control strategy portion of the implementation plan.~~

3. The board determines that the following occurs:

a. By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained in accordance with 9 VAC 5-80-2120 such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this article, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the ~~State~~ Implementation Plan) reasonable further progress; or

b. In the case of a new or modified major stationary source which is located in a zone, within the nonattainment area, identified by the administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development

should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the ~~State~~ Implementation Plan.

Any emission reductions required as a precondition of the issuance of a permit under subdivision 3 a or 3 b of this ~~section~~ subsection shall be state and federally enforceable before such permit may be issued.

4. The applicant shall demonstrate that all major stationary sources owned or operated by such applicant (or by any entity controlling, controlled by, or under common control with such applicant) in the Commonwealth are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under these regulations.

5. The administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this article.

6. The applicant shall demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source, that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

*B. Permits may be granted to stationary sources or emissions units that contain emission caps provided the limits or caps are made enforceable as a practical matter using the elements set forth in subsection D of this section.*

*C. Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9 VAC 5-50-270. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:*

- 1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.*
- 2. In no case shall a standard result in emissions that would exceed the emissions rate based on the potential to emit of the emissions unit.*
- 3. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.*

*D. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:*

- 1. Emission standards.*

*2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:*

- a. Limit on fuel sulfur content.*
- b. Limit on production rates with time frames as appropriate to support the emission standards.*
- c. Limit on raw material usage rate.*
- d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.*

*3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.*

*4. Specifications for air pollution control equipment installed or to be installed. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.*

*5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:*

- a. Pressure indicators and required pressure drop.*
- b. Temperature indicators and required temperature.*
- c. pH indicators and required pH.*
- d. Flow indicators and required flow.*

*6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.*

*7. Stack test requirements.*

*8. Reporting or recordkeeping requirements, or both.*

*9. Continuous emission or air quality monitoring requirements, or both.*

*10. Other requirements as may be necessary to ensure compliance with the applicable regulations.*

## **9 VAC 5-80-2060. Action on permit application.**

A. Within 30 days after receipt of an application, the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include (i) a determination as to which provisions of ~~this chapter~~ the new source review program are applicable, (ii) the

identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant *in writing* of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the board received all required information *and the provisions of §10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.*

B. Processing time for a permit is normally ~~90~~ 180 days following receipt of a complete application. *The board may extend this time period if additional information is required. Processing steps normally are as follows: may include, but not be limited to, the following:*

1. Completion of the preliminary review and analysis in accordance with 9VAC 5-80-2090 and the preliminary decision of the board.
2. Completion of the public participation requirements in accordance with 9 VAC 5-80-2070.
3. Completion of the final review and analysis and the final decision of the board.

C. The board *will* normally ~~will~~ take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from it) when required, unless more information is needed. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9 VAC 5-80-2080.

D. The applicant may appeal the decision pursuant to Part VIII (9 VAC 5-170-190 et seq.) of 9 VAC 5 Chapter 170.

E. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9 VAC 5-80-2070 F 1.

### **9 VAC 5-80-2070. Public participation.**

A. No later than 30 days after receiving the initial determination notification required under 9 VAC 5-80-2060 A, applicants shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the name, location, and type of the source, and the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

D. Upon determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the board, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing shall be held with notice in accordance with subsection F of this section.

F. For the public comment period and public hearing, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9 VAC 5-170-60), as well as the preliminary review and analysis and preliminary decision of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all local air pollution control agencies having ~~State Implementation Plan responsibilities~~ *jurisdiction* in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. *Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.*

G. *In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part, upon request of the applicant the board shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.*

~~G. H.~~ If appropriate, the board may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the board provides a public briefing, the requirements of subsection F of this section concerning public notification shall be followed.

**9 VAC 5-80-2080. Compliance determination and verification by performance testing.**

~~A. For stationary sources other than those specified in subsection B of this section,~~ Compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

~~B. For stationary sources of hazardous air pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9 VAC 5-60-20 and shall be verified by emission tests in accordance with the provisions of 9 VAC 5-60-30.~~

~~C. B.~~ Testing required by ~~subsections A and B~~ of this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

~~D. For sources subject to the provisions of Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 or Article 1 (9 VAC 5-60-60 et seq.) of Part II of 9 VAC 5 Chapter 60, the requirements of subsections A through C of this section shall be met in all cases.~~

~~E. For sources other than those specified in subsection D of this section,~~ C. The requirements of ~~subsections A through C~~ of this section shall be met unless the board:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;
4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or modified source to perform in compliance with applicable standards; or
5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

~~F. D.~~ The provisions for the granting of waivers under subsection ~~E~~ C of this section are intended for use in determining the initial compliance status of a source, ~~and~~ The granting of a waiver does not obligate the board to ~~do so for determining compliance~~ grant any waivers once the source

has been in operation for more than one year beyond the initial startup date.

*E. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirements of the implementation plan, or any other applicable federal requirements promulgated under the federal Clean Air Act.*

**9 VAC 5-80-2090. Application review and analysis.**

No permit shall be granted pursuant to this article unless compliance with the standards in 9 VAC 5-80-2050 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) and emission standards prescribed under 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.).
2. Applications shall be subject to an air quality analysis to determine the impact of qualifying *nonattainment* pollutant emissions.

**9 VAC 5-80-2100. Circumvention. (Repealed.)**

~~Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.~~

**9 VAC 5-80-2110. Interstate pollution abatement.**

A. The owner of each new or modified source, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels which may be affected by such source at least 60 days prior to the date of commencement of construction, reconstruction or modification.

B. Any state or political subdivision may petition the administrator, ~~EPA,~~ for a finding that any new or modified source emits or would emit any air pollutant in amounts which will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the ~~state~~ implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator, ~~U.S. Environmental Protection Agency,~~ will make such a finding or deny the petition.

C. Notwithstanding any permit granted pursuant to this article, no owner or other person shall commence construction, reconstruction or modification or begin operation of a source to which a finding has been made under the provisions of subsection B of this section.

**9 VAC 5-80-2120. Offsets.**

A. Owners shall comply with the offset requirements of this article by obtaining emission reductions from the same source or other sources in the same nonattainment area, except that for ozone precursor pollutants the board may allow the owner to obtain such emission reductions in another nonattainment area if (i) the other area has an equal or higher nonattainment classification than the area in which the source is located and (ii) emissions from such other area contribute to a violation of the ambient air quality standard in the nonattainment area in which the source is located. By the time a new or modified source begins operation, such emission reductions shall (i) be in effect, (ii) be state and federally enforceable and (iii) assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

B. The (i) ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds or (ii) the ratio of total emission reductions of nitrogen oxides to total increased emissions of nitrogen oxides in *ozone* nonattainment areas designated in 9VAC 5-20-204 shall be at least the following:

1. ~~Ozone~~ Nonattainment areas classified as marginal --1.1 to one.
2. ~~Ozone~~ Nonattainment areas classified as moderate --1.15 to one.
3. ~~Ozone~~ Nonattainment areas classified as serious --1.2 to one.
4. ~~Ozone~~ Nonattainment areas classified as severe --1.3 to one.
5. *Nonattainment areas not classified --1 to one.*

*The ratio of total emissions reductions of the nonattainment pollutant to total increased emissions of the nonattainment pollutant in nonattainment areas (other than ozone nonattainment areas) designated in 9 VAC 5-20-204 shall be at least 1 to one.*

C. Emission reductions otherwise required by these regulations shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by these regulations shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of subsection A of this section.

D. The board shall allow an owner to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

1. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

2. The source demonstrates to the satisfaction of the board that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

3. The source has obtained a written finding from the U.S. Department of Defense, U.S. Department of Transportation, National Aeronautics and Space Administration or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

4. The owner will comply with an alternative measure, imposed by the board, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the board may impose an emissions fee to be paid to the board which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that nonattainment area during the previous three years. The board shall utilize the fees in a manner that maximizes the emissions reductions in that nonattainment area.

E. For sources subject to the provisions of this article, the baseline for determining credit for emissions reduction is the emissions limit under the applicable ~~State~~ Implementation Plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area; or
2. The applicable ~~State~~ Implementation Plan does not contain an emissions limitation for that source or source category.

F. Where the emissions limit under the applicable ~~State~~ Implementation Plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

G. For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable ~~State~~ Implementation Plan for the type of fuel being burned at the time the application to construct is filed. If the owner of the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The board will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

H. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally and

state enforceable. In addition, the shutdown or curtailment is creditable only if it occurred on or after January 1, 1991.

I. No emissions credit may be allowed for replacing one hydrocarbon *volatile organic* compound with another of lesser reactivity, ~~except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).~~

J. ~~Where these regulations do~~ *this article does* not adequately address a particular issue, the provisions of Appendix S to 40 CFR Part 51 shall be followed to the extent that they do not conflict with ~~this section~~ *article*.

K. Credit for an emissions reduction can be claimed to the extent that the board has not relied on it in issuing any permit under this chapter or has not relied on it in demonstrating attainment or reasonable further progress.

### **9 VAC 5-80-2150. Compliance with local zoning requirements.**

~~The owner~~ *No provision of this part or any permit issued thereunder shall relieve an owner of the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.*

### **9 VAC 5-80-2160. Reactivation and permanent shutdown. (Repealed.)**

~~A. The reactivation of a stationary source is not subject to provisions of this article unless a decision concerning shutdown has been made pursuant to the provisions of subsections B through D of this section or 9 VAC 5-80-950 C.~~

~~B. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of this chapter.~~

~~C. The final decision shall be rendered as follows:~~

~~1. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.~~

~~2. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.~~

~~D. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subsection C of this section.~~

### **9 VAC 5-80-2180. Permit invalidation, suspension, revocation, and enforcement.**

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:

1. Eighteen months from the date the permit is granted.
2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any government entity.
3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).

B. A permit granted pursuant to this article shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted ~~without being subject to the requirements of 9VAC 5-80-2070 using the procedures for minor amendments in 9 VAC 5-80-2220.~~

D. Any owner who constructs or operates a source or modification not in accordance (i) ~~with the application submitted pursuant to this article or~~ (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all requirements of the regulations *of the board*.

F. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;
4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the ~~State~~ Implementation Plan in effect at the time that an application is submitted; or
5. Fails to comply with the applicable provisions of this article.

G. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection F of this section or for any other violations of ~~these~~ the regulations of the board.

*H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.*

~~H. I.~~ Violation of ~~these~~ the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part V (9 VAC 5-170-120 et seq.) of 9VAC 5 Chapter 170 and the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia).

~~H. J.~~ The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit or to render a permit invalid.

**9 VAC 5-80-2190. Existence of permit no defense.**

The existence of a permit under this article shall not constitute a defense to a violation of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) or ~~these~~ the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

**9 VAC 5-80-2200. Changes to permits.**

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-2210 through 9 VAC 5-80-2240.
2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.
3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this

*part shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part.*

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9 VAC 5-80-2210 through 9 VAC 5-80-2230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-2240.

**9 VAC 5-80-2210. Administrative permit amendments.**

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity that does not substantially affect the permit.
2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.
3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-2180 have been fulfilled.
4. The combining of permits under the new source review program as provided in 9 VAC 5-80-2020 C.

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.
2. The board shall incorporate the changes without providing notice to the public under 9VAC 5-80-2070. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.
3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**9 VAC 5-80-2220. Minor permit amendments.**

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable federal requirement;
2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements that would make

the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard;

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

a. An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and

6. Are not required to be processed as a significant amendment under 9 VAC 5-80-2230 or as an administrative permit amendment under 9 VAC 5-80-2210.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require more frequent monitoring or reporting by the permittee or to reduce the level of an emissions cap.

3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-2020 E 1 as state-only enforceable as provided in 9 VAC 5-80-2020 E 2 for any permit issued under this article or any regulation from which this article is derived.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-2070 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

## **9 VAC 5-80-2230. Significant amendment procedures.**

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9 VAC 5-80-2220 or as administrative amendments under 9 VAC 5-80-2210.

2. Significant amendment procedures shall be used for those permit amendments that:

a. Involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and

*(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.*

*B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at his discretion, include a suggested draft permit amendment.*

*C. The provisions of 9 VAC 5-80-2070 shall apply to requests made under this section.*

*D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a permit is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9 VAC 5-80-2070.*

*E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.*

**9 VAC 5-80-2240. Reopening for cause.**

*A. A permit may be reopened and amended under any of the following situations:*

- 1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.*
- 2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.*
- 3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.*
- 4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.*

*B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.*

*C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.*

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