

Virginia Regulatory Town Hall

Final Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	9 VAC 5-40-10 et seq.
Secondary Action(s):	9 VAC 5-50-10 et seq.
Action Title:	Toxic Pollutants (Rev. G00)
Date:	May 1, 2002

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

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed.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

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

This regulatory action amends the current state toxic pollutant rules to (1) reduce the number of regulated pollutants to those regulated under the federal program, and (2) exempt from applicability those sources which are subject to a federal hazardous air pollutant standard. This action will integrate the state's program more logically with the federal Clean Air Act.

Substantial Changes Made Since the Proposed Stage

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

None.

Statement of Final Agency Action

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

On February 27, 2002, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically Emission Standards for Toxic Pollutants (9 VAC Chapter 40, Article 3) and Standards for Toxic Pollutants (9 VAC Chapter 50, Article 3). The regulation amendments are to be effective on May 1, 2002.

Basis

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

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that (i) the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments and that (ii) the proposed regulation amendments comport with the applicable state and/or federal law is available upon request.

Purpose

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

The purpose of the regulations is to require source owners to limit emissions of toxic pollutants to a level that will not produce ambient air concentrations that may cause or contribute to the endangerment of human health. The proposed amendments are being made (i) to reduce the regulatory burden of the state's toxic pollutant program on industry in order to ensure that the state's enforcement resources are used in the manner best suited to protecting public health and welfare; and (ii) to render the state toxic pollutant

program consistent with the federal Clean Air Act, according to a determination made pursuant to the review of existing regulations mandated by Executive Order 15(94).

Substance

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

1. The list of toxic air pollutants covered by the regulations is limited to the 188 substances regulated under § 112 of the federal Clean Air Act. This has been Virginia's policy and practice at least since 1991, but that practice has not been clearly articulated in the regulation.
2. Those source categories that are subject to an emission standard under § 112 of the federal Clean Air Act or that have been determined by the EPA to require no regulation are exempted from applicability. Under the current rules, sources must comply with both federal and state regulations. If, therefore, the state rules were to require a more stringent control of emissions than that required by the federal maximum achievable control technology standard (MACT), the source would have to comply with the MACT and perform whatever additional actions were necessary to bring the source into compliance with the state standard. Under the new rules, sources need only comply with one set of regulations, either federal or state, not both.

Issues

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

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

Thus, enforcement costs will be reduced, allowing the department to divert scarce resources to other areas. The proposed regulatory action will have no disadvantages for the department or the Commonwealth.

Public Comment

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

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

Detail of Changes

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

None.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION G00
CONCERNING

TOXIC POLLUTANTS
(9 VAC 5 CHAPTERS 40 AND 50)

INTRODUCTION

At its meeting on May 24, 2001, the board authorized the department to promulgate for public comment a proposed regulation revision concerning toxic pollutants.

A public hearing was advertised accordingly and held in Richmond on December 7, 2001, and the public comment period closed on December 24, 2001. The proposed regulation amendments subject to the hearing are summarized below, followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering toxic pollutants. A summary of the amendments follows:

1. The provision for the establishment of the priority pollutant policy was eliminated (9 VAC 5-40-160 B; 9 VAC 5-50-160 B).
2. The exemption of a source that has the potential to emit a toxic pollutant without a TLV® was clarified to originate with the owner's request (9 VAC 5-40-160 D 2; 9 VAC 5-50-160 D 2).
3. Source exemptions were updated to conform to § 112 of the federal Clean Air Act and to other regulations of the board (9 VAC 5-40-160 E; 9 VAC 5-50-160 E).
4. The exemption of the outdoor application of pesticide was clarified (9 VAC 5-40-160 G; 9 VAC 5-40-160 G).
5. The definition of "best available control technology (BACT)" was eliminated from the existing source rule (9 VAC 5-40-170 C).

6. A definition of "fugitive emissions" was added as well as a clarification that these emissions shall be included in determining a source's potential to emit (9 VAC 5-40-170 C; 9 VAC 5-50-170 C).
7. A definition was added for "source category schedule definition for standards" to update the regulations to conform to § 112 of the federal Clean Air Act (9 VAC 5-40-170 C; 9 VAC 5-50-170 C).
8. The definition of "toxic pollutant" was updated to conform to § 112 of the federal Clean Air Act (9 VAC 5-40-170 C; 9 VAC 5-50-170 C).
9. The inclusion of emissions from exempt sources in the calculation of ambient air concentrations was clarified (9 VAC 5-40-210 C; 9 VAC 5-50-210 C).
10. The compliance options for existing sources were simplified to eliminate the requirement for BACT, to give the owner more flexibility in complying, and to give the board more discretion in its case determination (9 VAC 5-40-220 B).

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Richmond, Virginia on December 7, 2001. Six people attended the hearing, with two of those offering oral testimony. Additional written comments from six other commenters were received during the public comment period. As required by law, notice of this hearing was given to the public on or about October 9, 2001, in the Virginia Register and in seven major newspapers (one in each Air Quality Control Region) throughout the Commonwealth. In addition, individual notice of this hearing and the opportunity to comment was given by mail to those on the department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report, which is on file at the department.

ANALYSIS OF TESTIMONY

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

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

COMMENTERS: Stevenson T. Walker, President & CEO, Virginia Manufacturers Association; M. L. Textor, Manager, Hopewell Plant, Honeywell

TEXT: The Board's proposal would significantly revise Virginia's current state air toxics rules. The proposed changes would affect two important aspects of the rules - which pollutants are regulated under the rules and which sources are subject to the rules. The VMA strongly supports the Board's proposed revisions in these two areas. With respect to the pollutants regulated under the rules, the VMA believes the Board should codify by regulation the reasonable approach it has been implementing by policy. For several years, the Board's policy has been to focus implementation of the rules on pollutants designated as "hazardous air pollutants" (HAPs) under § 112 of the federal Clean Air Act. These HAPs are clearly the pollutants of greatest concern and should be the focus of Virginia's state air toxics regulations.

RESPONSE: Support for the proposal is appreciated.

2. **SUBJECT:** Board's authority

COMMENTERS: Stevenson T. Walker, President & CEO, Virginia Manufacturers Association; M. L. Textor, Manager, Hopewell Plant, Honeywell

TEXT: It is important to note that under the revised rules proposed by the Board, it retains the authority to regulate pollutants other than the federally designated HAPs should it determine there is a particular need for such regulation in Virginia [in 9 VAC 5-60-210 C "Toxic pollutant"]. The VMA fully supports this authority provided that in exercising such authority, the Board abides by the rulemaking requirements in the Virginia Administrative Process Act. This would assure the public input necessary to ensure the Board makes a well reasoned decision to regulate additional non-HAPs under these rules.

RESPONSE: Support for the proposal is appreciated.

3. **SUBJECT:** Duplicative regulatory provisions

COMMENTERS: Stevenson T. Walker, President & CEO, Virginia Manufacturers Association; M. L. Textor, Manager, Hopewell Plant, Honeywell

TEXT: With respect to the sources regulated under the revised rules, the VMA supports the Board's approach to eliminate unnecessary and unwarranted duplicative regulation of HAP sources under both the federal and state programs. The revised rules will implement a phase out of the applicability of the state air toxics program to all sources in source categories that become regulated under the rapidly maturing federal HAP programs. This will prevent HAP sources from facing duplicative or conflicting regulation under both the federal and state HAP programs. The VMA fully supports the Board's approach in this area.

RESPONSE: Support for the proposal is appreciated.

4. **SUBJECT:** Exemptions regarding major and minor sources

COMMENTER: Stevenson T. Walker, President & CEO, Virginia Manufacturers Association

TEXT: We do have a few minor questions and comments about the wording of some provisions of the proposed regulations. First, we have received assurances from the Department that the exemption provisions set forth in subsections C 3, C 4, and C 5 of the applicability sections of Rules 6-4 and 6-5 apply to natural minor (area), synthetic minor, and major sources of hazardous pollutants alike. For example, minor sources in source categories for which the U.S. Environmental Protection Agency has promulgated a CAA § 112 standard are as eligible as major sources for the exemption from applicability provided by subsection C 4. Thus, the exemption applies to all sources within such source categories regardless of any particular source's status as a minor or major source. We understand this was clearly the intent of the Advisory Group. To clarify this, we recommend the following rewording of subsection C 4 in Rules 6-4 and 6-5: "Any stationary source in a source category for which an emission standard or other requirement has been promulgated pursuant to § 112 of the federal Clean Air Act and which is subject to the source category schedule of standards. If less than all of a stationary source is in a source category for which such an emission standard or other requirement has been promulgated, then only that part of the stationary source in the source category for which such an emission standard or other requirement has been promulgated is exempted."

RESPONSE: No distinction between major and minor sources is made in 9 VAC 5-60-150 C or -250 C. Both types of sources, therefore, are eligible for exemption under the specified provisions.

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

5. **SUBJECT:** Specific regulatory citations

COMMENTERS: Stevenson T. Walker, President & CEO, Virginia Manufacturers Association; M. L. Textor, Manager, Hopewell Plant, Honeywell

TEXT: We also recommend that, if at all possible under the Virginia Registrar's rules governing the form of regulations, the Department delete the reference to the specific Federal Register citation in the definition of "source category schedule for standards." We are concerned about what would happen if the Federal Register material cited in the state air toxics rules is superseded because the EPA issues revised source category designations or schedules for standards. We believe the state air toxics rules should merely refer to categories and schedules the EPA publishes in the Federal Register without reference to a specific citation that could become outdated and necessitate Board action to revise the state air toxics rules. What happens to sources

affected by such federal changes until the Board actually does amend the state air toxics rules? For these reasons, we urge the Department and Board to delete the citation to the specific Federal Register notice if such a deletion is allowed by the Virginia Registrar.

RESPONSE: The board has two reasons for preserving the specific citation: (i) the Virginia Registrar of Regulations requires regulatory references to the Federal Register to include specific dates; and (ii) the omission of the specific citation would be tantamount to the board's relinquishing to another entity its general authority to adopt regulations.

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

6. **SUBJECT:** Definition of BACT

COMMENTERS: Stevenson T. Walker, President & CEO, Virginia Manufacturers Association; M. L. Textor, Manager, Hopewell Plant, Honeywell

TEXT: We are also concerned about the definition of "best available control technology" (BACT) proposed in 9 VAC 5-60-310.C of Rule 6-5. The Board has recently proposed revised regulations pertaining to new source review (NSR) for the construction or reconstruction of "minor" sources and "minor" modifications of sources of air pollutants. As part of that rulemaking, the Board proposes to modify the definition of BACT for minor NSR purposes. See 9 VAC 5-50-250.C, 17 Va. Reg. 3653 (Aug. 27, 2001). That definition of BACT will differ from the definition of BACT in Rule 6-5.

The VMA believes there is no compelling reason to have different definitions of BACT in the minor NSR and state air toxics regulations. This situation would subject many permit applicants to two differing requirements for control standards for the same minor source or minor modification. For example, if an applicant seeks a minor NSR permit for a source of volatile organic compounds (VOCs) and one or more of the VOCs are HAPs, which BACT standard applies - the one in the general standards for new and modified sources or the one in Rule 6-5? If the BACT definition in proposed Rule 6-5 takes precedence, the minor NSR Advisory Group and Department essentially wasted their time in drafting a revised definition of BACT in the general standards because the vast majority of VOC sources will emit one or more HAPs (and the same may well be true for sources of particulates). To rectify this situation, the VMA strongly advocates changing the definition of BACT in Rule 6-5 to be identical to the definition of BACT in proposed 9 VAC 5-50-250 C.

RESPONSE: As the commenter observes, the board is altering its longstanding policy of using one definition of BACT throughout its regulations. Such alteration makes it possible for the board to structure the definition of BACT to meet the needs of each permit regulation. The proposal for minor NSR (and consequently its definition of BACT) is specifically cross-referenced to the minor NSR program. Given the differences in health impacts between the criteria pollutants addressed by the minor NSR program and the

hazardous air pollutants addressed by the proposal in question, the board believes that the definition of BACT should be tailored to each specific program.

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

7. **SUBJECT:** General support for the proposal

COMMENTER: Stevenson T. Walker, President & CEO, Virginia Manufacturers Association

TEXT: The proposed regulations were originally drafted by the Department with the assistance of an ad hoc Advisory Group. We commend the Advisory Group and the Department for a job well done. We strongly support the proposed rules, but believe they would be improved with the changes we advocate in these comments. We urge the Department and the Board to adopt the proposed rules with those changes.

RESPONSE: Support for the proposal is appreciated. For the reasons why the suggested changes are not being adopted, see responses to comments 4, 5, and 6.

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

8. **SUBJECT:** General support for the proposal

COMMENTER: Phillip E. Towles, Environmental Specialist, General Shale Products

TEXT: I am glad to see that the proposed regulations clarify several points that have long been understood but not necessarily spelled out.

RESPONSE: Support for the proposal is appreciated.

9. **SUBJECT:** Exemptions for kilns

COMMENTER: Phillip E. Towles, Environmental Specialist, General Shale Products

TEXT: Regarding the exemptions as stated under C 7, I would like to request that kilns burning only natural gas, #2 fuel oil, #6 fuel oil, propane, or kerosene be added to the list of exemptions. Kilns are often mistakenly overlooked as falling under the regulatory constraints set forth for boilers and are therefore often ignored regarding exemptions to regulations. However, the burning of cleaner fuels such as natural gas has the same effect of reducing emissions.

RESPONSE: The commenter does not differentiate among kilns or specify what types of kilns he means. Emissions from kilns differ according to whether

they derive solely from fuel combustion or also from other chemical or physical changes occurring within the kiln itself. For instance, the emissions from kilns used to dry sand derive solely from fuel combustion and can be reduced through cleaner fuel use. On the other hand, emissions from lime kilns at kraft mills derive largely from chemical reactions that the kiln is designed to facilitate. Cleaner fuel use would have no bearing on these emissions, which are so significant that the new federal Maximum Achievable Control Technology (MACT) standard for paper mills controls for the emissions of metals from such kilns. Without more specificity regarding the types of kilns that might be appropriately exempted under the specified provisions, therefore, the change suggested by the commenter would be too general.

No change has been made to the proposal as a result of this comment. See, however, the response to comment 11.

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

COMMENTER: Mark Feltner, Environmental Scientist, Virginia Association of Municipal Wastewater Agencies (VAMWA)

TEXT: VAMWA supports DEQ's effort to render the state air toxics program consistent with the Clean Air Act and reduce the regulatory burden of the state air toxics program on both the regulated community and DEQ while protecting the Commonwealth's public health and welfare. VAMWA members understand the burdens of complying with competing rules such as the Publicly Owned Treatment Works Maximum Achievable Control Technology Standard and the state toxics program such that VAMWA further supports DEQ's effort in this action to requiring sources the need to only comply with one set of regulations, either state or federal, not both.

RESPONSE: Support for the proposal is appreciated.

11. **SUBJECT**: Apparent inconsistency in applicability

COMMENTER: Lane Smith, Manager, Environmental Projects, Solite Corporation

TEXT: The rotary lightweight aggregate kilns at the Solite facilities are considered boiler and industrial furnace units that burn hazardous waste for energy recovery. According to the proposed language of 9 VAC 5-60-200(c)(6), the Solite facilities would not be exempt from proposed Rule 6-4. However, the Solite facilities are subject to the standards of 40 CFR 63.1200, i.e., the hazardous waste combustor MACT, which applies to the following source categories: hazardous waste burning cement kilns, lightweight aggregate kilns, and incinerators. Therefore, although 9 VAC 5-60-200(c)(6) specifically prohibits the exemption for facilities burning hazardous waste for energy recovery, 9 VAC 5-60-200(c)(4) specifically entitles any source category regulated by an emission standard established pursuant to §112 of the CAA to an exemption.

Therefore, the text of 9 VAC 5-60-200(c)(6) should be revised such that the apparent inconsistency between 9 VAC 5-60-200(c)(4) and (6) as noted above is redressed, and that the regulation clearly provides for the exemption from the proposed rules for units subject to the hazardous waste combustor MACT (i.e., cement kilns, aggregate kilns, and incinerators). We specifically request that the last sentence of 9 VAC 5-60-200(c)(6), which states, "Facilities that burn hazardous waste for energy recovery are not exempted from this section," be completely removed from the proposed rule and not adopted into the final rule.

RESPONSE: The board agrees that this sentence is potentially confusing but believes that its removal would allow for the exemption of more sources than intended by the proposed changes. Therefore, the sentence in question was qualified as follows: "Unless exempted under 9 VAC 5-60-200 [300] C 4, facilities that burn hazardous waste for energy recovery are ~~not exempted from~~ subject to this section." The board believes that the addition of this qualification will obviate any potential confusion without weakening the applicability of the regulation.

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

COMMENTER: Pamela F. Faggert, Vice President and Chief Environmental Officer, Dominion Generation

TEXT: Dominion Generation supports the changes proposed by DEQ. The current regulation was developed at least in part as a response to the failure of the Federal regulations to adequately address a critical public health issue. The original SAPCB "non-criteria pollutants" regulation was an important "stopgap" measure, and was particularly responsive in light of the concern in the 1980s for significant air toxics releases. However, because of the large number of pollutants included in the rule and the lack of good emissions estimates and factors, the rule has always been very difficult to implement. The Clean Air Act Amendments of 1990 directed EPA to establish a comprehensive, schedule-driven program for setting new emissions standards for hazardous air pollutants that focuses on only those pollutants of concern. Thus, while the Virginia "non-criteria pollutants" regulation was appropriate and necessary in the 1980s, it has been supplanted in many cases by the improved Federal program. These proposed changes will help to avoid the unnecessary implementation of duplicative requirements, but still allow the SAPCB the flexibility to control hazardous air pollutant emissions from those sources not subject to, nor reviewed under the Federal program.

RESPONSE: Support for the proposal is appreciated.

13. **SUBJECT:** Opposition to the proposal

COMMENTER: Catherine G. Hamm, Executive Director, American Lung Association of Virginia

TEXT: The American Lung Association believes that toxic air pollutants should be controlled and monitored with vigilance to ensure that our citizens are protected from harm, including the cumulative effects of these toxics. It is our understanding that the proposed regulations will result in fewer of these toxic air pollutants being monitored or exempted from applicability. The Association has requested verbally and in writing a list of toxic pollutants that will no longer be monitored or exempted from applicability. The Association, once again, formally requests this information from the Virginia Department of Environmental Quality. The American Lung Association of Virginia does not support the proposed regulations, which will result in fewer toxic pollutants being regulated by the Commonwealth.

RESPONSE: The commenter misunderstands the purpose and effect of the proposed changes. The proposed regulations amendments will **not** result in fewer toxic air pollutants being regulated by Virginia. As explained in the proposal published in the Virginia Register on October 22, 2001, the proposed regulation amendments will result in the list of toxic pollutants currently regulated by Virginia being transferred from policy to regulation. The proposed regulatory exclusions (asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®) are already excluded from implementation by policy. (Asbestos is already monitored by the Department of Labor and Industry. For the other substances, no scientific standards exist by which significant ambient air concentration guidelines can be derived.) The transfer of the list of toxic pollutants monitored by Virginia from policy to regulation will strengthen, not weaken, the enforceability of the program.

No change was made to the proposal on the basis of this comment.

14. **SUBJECT:** Opposition to the proposal

COMMENTER: Glen Besa, Director, Sierra Club, Virginia Chapter

TEXT: Having reviewed the Proposed Regulations, the Agency Background Documents as well as the administrative record, it appears that health and environmental impacts of the proposed amendments to the state air toxic pollutant rules remain unknown or undisclosed. Health and environmental representatives on the Ad Hoc Advisory Group had requested that DEQ disclose the specific hazardous air pollutants (HAPs) that would no longer be regulated, and Sierra Club in its November 21, 2001, FOIA request made a similar request. Our recent review of the record (more than 4 years of an administrative rule making process) reveals that this fundamental question has never been addressed.

RESPONSE: See response to comment 13.

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

16. **SUBJECT:** Opposition to the proposal

COMMENTER: Glen Besa, Director, Sierra Club, Virginia Chapter

TEXT: The proposed rulemaking should be suspended indefinitely unless and until DEQ can disclose the toxic air pollutants that will no longer be regulated, the sources that emit these toxics, and the communities where these sources are located. These basic questions should have been answered in the Agency Background Document under the sections *Localities Particularly Affected* and *Family Impact Statement*. There is no rational basis upon which these proposed changes should proceed until these questions are answered.

RESPONSE: See response to comment 13.

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

17. **SUBJECT:** Opposition to the proposal

COMMENTER: Glen Besa, Director, Sierra Club, Virginia Chapter

TEXT: It appears clear from the Agency Background Document that DEQ has or should have information in its permit files to answer these questions. The detailed cost savings touted for these regulations demonstrate that DEQ is aware of the actual emissions from specific sources. The Agency Background Document provides that *"approximately 300 major source permits have toxic conditions written into their permits (ed.-annually), and about 88 sources receive a toxics review as a part of their evaluation each year....Of the 88 sources that get a toxic review, about nine sources may also require approximately 8-16 hours of research...to assess the risks through technical research and consulting....About four of the 88 sources that get a toxics review annually are required to have toxics modeling done."* If this level of detail can be marshaled to estimate cost savings, then surely the questions of *who is emitting what pollutant where* can be addressed by the agency as well.

RESPONSE: See response to comment 13.

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

18. **SUBJECT:** Opposition to the proposal

COMMENTER: Glen Besa, Director, Sierra Club, Virginia Chapter

TEXT: The Agency Background Document asserts that since 1991 DEQ has only focused on the same 188 hazardous air pollutants regulated under section 112 of the federal Clean Air Act. However, if DEQ has the authority to simply suspend its regulatory oversight on a wide range of air toxics not covered by the federal Clean Air Act, then doesn't the agency have the authority to suspend its review for federally listed air toxics which the agency claims is duplicative? If this process is duplicative, why

didn't the agency use its limited resources to continue its review of toxics not federally regulated under the Clean Air Act?

RESPONSE: The pollutants listed in §112 of the Clean Air Act are those that the United States Environmental Protection Agency has determined pose the greatest threat to human health. Furthermore, they are those for which threshold limit values have been determined by the American Conference of Governmental Industrial Hygienists. These are therefore not only the most important toxic pollutants to monitor from the standpoint of human health, they are also those for which enforcement is scientifically justifiable.

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

19. **SUBJECT:** Opposition to the proposal

COMMENTER: Glen Besa, Director, Sierra Club, Virginia Chapter

TEXT: A review of the public record of this rulemaking proceeding reveals that health and environmental representatives (including those on the Ad Hoc Advisory Group) repeatedly expressed serious concerns and objections to the proposed changes while the regulated community (the emitters of air toxics) were enthusiastic in their support of what is an admitted weakening of DEQ's authority to protect the public from toxic air pollution. Coming as it now does with an impending change in administrations, Sierra Club believes the prudent course of action for DEQ is to not proceed further with this rule making and to allow the new administration an opportunity to demonstrate, if it can, why these proposed regulations serve the public health and well-being of the Commonwealth.

RESPONSE: See response to comment 13.

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

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