



Fast Track Proposed Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	9VAC5-210
Regulation title	Regulation for Dispute Resolution
Action title	Revision B14
Date this document prepared	May 27, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

As required by § 10.1-1186.3.D of the Code of Virginia, the Board adopted the *Regulation for Dispute Resolution*, 9VAC5-210, and this regulation became effective on July 1, 2001. The provisions of § 10.1-1186.3 of the Code of Virginia reference the statutory requirements for dispute resolution and mediation under Chapter 20.2 and Chapter 21.2 of Title 8.01 of the Code of Virginia. Since the effective date of 9VAC5-210, the statutory requirements for dispute resolution and mediation under Chapter 20.2 and Chapter 21.2 of Title 8.01 of the Code of Virginia have been amended. Therefore, a regulatory action to revise 9VAC5-210 is necessary in order to comport to changes made to Title 8.01 of the Code of Virginia.

In addition, a periodic review was conducted prior to this regulatory action. No comments were received; however, the agency is undertaking this regulatory action as statutory changes have been made that necessitate this revision. Please see the periodic review/small business impact review result section for additional information.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At its meeting on June 13, 2014, the State Air Pollution Control Board approved the following:

- The Board authorized the Department to promulgate the proposed Revision B14 to 9VAC5-210 for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial.
- The Board's authorization also constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more members of the public, or any member of the applicable standing committee of either house of the General Assembly or the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
- The Board authorized the Department to set an effective date 15 days after close of the public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. The identification should include a reference to the agency/board/person's overall regulatory authority, as well as a specific provision authorizing the promulgating entity to regulate this specific subject or program; and a description of the extent to which the authority is mandatory or discretionary

This regulation is promulgated under the authorities of § 10.1-1186.3.D of the Code of Virginia which required the Board to adopt regulations for the mediation and dispute resolutions in accordance with provisions of § 10.1-1186.3. There is no discretion. Additionally, the Board's overall authority is provided in § 10.1-1308 of the Virginia Air Pollution Control Law which authorizes the Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Statutory provisions cited in the authorizing provisions of § 10.1-1186.3 of the Code of Virginia were revised after the effective date of this regulation. Therefore, 9VAC5-210 will be amended as necessary for the changes made to the statutory requirements for dispute resolution and mediation in Title 8.01 of the Code of Virginia.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If either an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules; or the Department

finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the Department shall (i) file notice of the objection/reason with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

This amendment is not expected to be controversial as it is necessary to revise the regulation due to: (i) changes to statutory provisions; (ii) revised regulatory citations; and, (iii) an update of the mediation standards (document incorporated by reference).

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. Note, more detail about all provisions or changes is provided in the "Detail of changes" section. Please be sure to define any acronyms.

The changes to the regulations have been made to include revised and additional requirements for dispute resolution and mediation under Title 8.01 of the Code of Virginia and to update the document incorporated by reference.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
3) *other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

There are no disadvantages to the public or the Commonwealth associated with this regulatory action.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation amendments are not more restrictive as there are no applicable analogous federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

No locality will be particularly affected by this regulatory amendment.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1.B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business.

Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

Section 10.1-1186.3 of the Code of Virginia directs the Board to adopt regulations for alternate dispute resolution and mediation. This regulation provides for a program that promotes the fair, expeditious, voluntary, and consensual resolution of disputes related to a regulatory action or a permit issuance. The alternative dispute resolution or mediation process as outlined in this regulation is applicable statewide, including small businesses that may use this voluntary process to resolve disputes over regulatory actions or permit issuances.

Public Participation

Please include a statement that in addition to any other comments on the regulation, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

All comments requested by this document must be submitted to the agency contact: Debra Harris, Policy & Planning Specialist, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email debra.harris@deq.virginia.gov, fax 804-698-4019).

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

<p>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities may or may not be regulated by this board</p>	<p>Those affected would be individuals, businesses or other entities that has a significant disagreement with the Board over a regulation development or permit issuance. However, it is solely the Board's decision to employ a dispute resolution process for an appropriate case.</p>
<p>Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-</p>	<p>To date, the mediation and alternative dispute resolution proceedings of this chapter have not been utilized. Therefore, those currently affected are none.</p>

time employees, or has gross annual sales of less than \$6 million.	
Benefits expected as a result of this regulatory proposal.	The regulatory amendment will update the provisions to the current statutory requirements.
Projected cost to the state to implement and enforce this regulatory proposal.	There is no projected cost to the state to implement or enforce the regulatory amendment.
Projected cost to localities to implement and enforce this regulatory proposal.	There is no projected cost to localities to implement or enforce the regulatory amendment.
All projected costs of this regulatory proposal for affected individuals, businesses, or other entities. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	There is no projected cost to those affected as the choice to enter into the alternative dispute resolution/mediation process is voluntary and the cost for the mediation/dispute resolution is agreed to by the parties prior to starting the process.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation

There are no viable alternatives the statutory provision under § 10.1-1186.3 D of the Code of Virginia requires that the Board adopt regulations for alternative dispute resolution proceedings.

Periodic review/small business impact review result

If this fast-track regulation is the result of a period review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

If this fast-track regulation is also a small business impact review report of the regulation pursuant to §2.2-4007.1 E and F, include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency’s determination of whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

A periodic review/small business impact review was initiated for this regulation on April 21, 2014 and ended on May 12, 2014. No comments were received during the public comment period. However, the agency's review indicated statutory changes to Chapter 20.2 and Chapter 21.2 of Title 8.01 of the Code of Virginia have been made since the effective date of this regulation. As § 10.1-1186.3 of the Code of Virginia references the requirements for dispute resolution and mediation under Chapter 20.2 and Chapter 21.2 of Title 8.01 of the Code of Virginia, a regulatory action to amend 9VAC5-210 is necessary to comport to the changes made to the statutory requirements for dispute resolution and mediation in Title 8.01 of the Code of Virginia.

The regulation complies with Executive Order 14 (2010) as it is required by statute and provides an option for an alternative resolution of disputes with regulatory actions or permit issuance. The regulation is clearly written and easily understandable.

The periodic review also included a small business impact review report of the regulation pursuant to §2.2-4007.1 E and F. There is a continued need for this regulation and the agency has determined that this regulation imposes no additional regulatory burden on small businesses.

The regulation is being amended in order to be consistent with changes to the statutory law for dispute resolution and mediation under Title 8.01 of the Code of Virginia.

Family impact

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

There is no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

Current section number	Current requirement	Proposed change and rationale
9VAC5-210-20	Terms defined.	Clarified terms and revised terms in accordance with changes to § 8.01-576.4 and § 8.01-581.21.
9VAC5-210-30	Applicability.	Corrected style for Part heading and APA statutory cite.
9VAC5-210-40	Purpose and scope.	Corrected citation for APA.
9VAC5-210-50	Costs.	Changed to term neutral instead of neutral facilitator.
9VAC5-210-60	Date, time, and place.	Changed to term neutral instead of neutral facilitator.
9VAC5-210-70	Attendance at the dispute resolution procedure.	Changed to term neutral instead of neutral facilitator
9VAC5-210-80	Confidentiality.	Revised in accordance with changes to § 8.01-576.10.
9VAC5-210-100	Standards for and authority of neutral.	Changed to term neutral instead of neutral facilitator and revised standards in accordance with § 8.01-576.9 and § 8.01-581.24. Also, corrected citation for the APA.
9VAC5-210-110	Resumes of neutral and descriptions of dispute resolution programs.	Changed to term neutral instead of neutral facilitator.
9VAC5-210-130	Referral of disputes to dispute resolution.	Changed to term neutral instead of neutral facilitator.
9VAC5-210-140	Appointment of mediator.	Corrected style for Part heading and added mediation standards in D.1.

9VAC5-210-150	Evaluation session.	Changed term "evaluation session" to "orientation session".
9VAC5-210-160	Continuation, termination, and resolution of mediation.	Changed term "evaluation session" to "orientation session".
	Documents incorporated by reference.	Updated to reference the latest version of the standards for mediators (July 1, 2011).

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

APA – Administrative Process Act