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## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	Article 2, 9VAC5-80 (Permit Program Emissions Fees for Stationary Sources); Article 10, 9VAC5-80 (Permit Application Fees for Stationary Sources); and Article 11, 9VAC5-80 (Annual Permit Maintenance Fees for Stationary Sources)
<b>Regulation title(s)</b>	Regulations for the Control and Abatement of Air Pollution
<b>Action title</b>	Title V Program Fees (Revision K16)
<b>Date this document prepared</b>	February 22, 2017

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

## Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. If applicable, generally describe the existing regulation.*

Article 2 (9VAC5-80-310 et seq.) of 9VAC5-80 (Permits for Stationary Sources) requires that permit program emissions fees be paid by sources subject to Title V of the federal Clean Air Act on the basis of the source's annual air pollutant emissions. The emissions fee rate (in dollars per ton of emissions) is calculated according to a formula that annually adjusts a \$31.22 base fee rate by all increases in the Consumer Price Index (CPI) since 1989. The billing and payment timing and methods are also specified. In this amendment, the emissions fee rate is sequentially increased over two years, the method of calculating future CPI emissions fee adjustments is changed to an equivalent method that is consistent with the annual adjustments to Title V permit application fees and Title V permit maintenance fees, and greenhouse gas emissions are excluded from the calculation of emissions fees. Various other changes are made to Article 2 to support and clarify the emissions fee calculation changes.

Article 10 (9VAC5-80-2250 et seq.) of 9VAC5-80 (Permits for Stationary Sources) requires that application fees be assessed for certain types of air permit applications, which are adjusted annually by increases in the CPI. The billing, payment, and calculation method for those fees are also described in

this article. In this amendment, permit application fees are increased depending on the permit application type. Provisions for application amendments are clarified to support the changes.

Article 11 (9VAC5-80-2310 et seq.) of 9VAC5-80 (Permits for Stationary Sources) requires that sources that would be subject to the Title V permit program and that hold certain types of permits be assessed permit maintenance fees on an annual basis, adjusted annually for increases in the CPI. The billing, payment, and calculation method for those fees are also described in this article. In this amendment, permit maintenance fees are being increased and a new minimum fee for synthetic minor sources is established.

## 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.*

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“Board” means the State Air Pollution Control Board

“CAAA” means the 1990 Clean Air Act Amendment.

“CFR” means the Code of Federal Regulations.

“CPI” means the Consumer Price Index, published by the United States Department of Labor, Bureau of Labor Statistics.

“EPA” means the United States Environmental Protection Agency.

“FY” means fiscal year (as opposed to calendar year), and refers to the Commonwealth of Virginia’s fiscal year that begins on July 1 and ends on June 30.

“GHG” means greenhouse gas.

“SAG” means Stakeholder Advisory Group.

“SM-80” means a synthetic minor 80% source, which is a synthetic minor source that emits or has the potential to emit a regulated pollutant at or above 80% of the major source threshold for that pollutant.

“Title V” means the fifth Title of the federal Clean Air Act.

## 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. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

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

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

The federal statutory basis for the regulation is Title V, Sections 501-507 of the federal Clean Air Act (42 USC 7401 et seq., 91 Stat 685).

The 1990 Clean Air Act Amendments (CAAA) created a major change to the approach taken by the U.S. Congress in previous promulgations of the federal Clean Air Act. Title V of the CAAA requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under the permit programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. Section 502 of the Act requires that states develop permit fee programs to pay for the costs of the state's Title V Permit Program.

Section 502 (b)(3) of the CAAA sets out the minimum elements that must be included in each state's permit fee program. The owner or operator of all sources subject to the requirements to obtain a permit must pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V, including the cost of the small business technical assistance program. Section 502 (b)(3)(A) specifies what is meant by reasonable costs, as follows:

1. Reviewing and acting upon any application for a permit.
2. Implementing and enforcing the terms and conditions of the permit, but not including any court costs or other costs associated with any enforcement action.
3. Emissions and ambient monitoring.
4. Preparing generally applicable regulations or guidance.
5. Modeling, analyses, and demonstrations.
6. Preparing inventories and tracking systems.

Section 502 (b)(3)(B) specifies the requirements for the total amount of fees to be collected by the state permitting authority, as follows:

1. The state must demonstrate that, except as otherwise provided, the program will collect in the aggregate from all sources subject to the program an amount not less than \$25 per ton of each regulated pollutant, or such other amount as the EPA administrator may determine adequately reflects the reasonable costs of the permit program.
2. "Regulated pollutant" means (a) a volatile organic compound; (b) each pollutant regulated under Section 111 or 112 of the Act; and (c) each pollutant for which a national primary ambient air quality standard has been promulgated (except carbon monoxide).
3. In determining the amount to be collected, the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that pollutant.
4. The requirements of paragraph 1 above will not apply if the permitting authority can demonstrate that collecting an amount less than \$25 per ton of each regulated pollutant will meet the requirements of 502 (b)(3)(A).

5. The fee calculated under paragraph 1 above shall be increased (consistent with the need to cover the reasonable costs authorized by 502 (b)(3)(A) in each year beginning after the year of the enactment of the Act by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

Section 502 (b)(3)(C) specifies the requirements of a federal permit fee program if the EPA administrator finds that the fee provisions of a state program are inadequate or if the Title V operating permit program itself is inadequate and EPA has to administer the fee program itself. This section allows the EPA administrator to collect additional fees to cover the administrator's costs of administering a federal fee program and specifies that the EPA administrator may collect additional penalties and interest for failure to pay fees.

Section 502 (b)(4) specifies that the minimum elements for the permit program include requirements for adequate personnel and funding to administer the program.

Section 507 (f) specifies that the state may reduce any fee required under Title V to take into account the financial resources of small business stationary sources.

The federal regulatory basis for the Title V Fee Program is 40 CFR § 70.9.

Section 70.9 (a) specifies that the state program require that the owners or operators of part 70 sources pay annual fees that are sufficient to cover the permit program costs and that any fee required by this section will be used solely for Title V permit program costs.

Section 70.9 (b)(1) specifies that the state establish a fee schedule that results in the collection and retention of revenues sufficient to cover the permit program costs. These costs shall include, but are not limited to:

1. Preparing generally applicable regulations or guidance regarding the Title V permit program or its implementation or enforcement;
2. Reviewing and acting on any permit application including the development of an applicable requirement;
3. General administrative costs of running the permit program, including the supporting and tracking of permit applications, compliance certification, and related data entry;
4. Implementing and enforcing the terms of any Title V permit;
5. Emissions and ambient monitoring;
6. Modeling, analyses, or demonstrations;
7. Preparing inventories and tracking emissions; and
8. Providing direct and indirect support to sources under the Small Business Stationary Source Technical and Environmental Compliance Assistance Programs in determining and meeting their obligations under the Title V permit program.

Section 70.9 (b)(2) provides a fee schedule that EPA will presume meets the requirements of 40 CFR § 70.9 (b)(1), which includes collecting not less than \$25 per year per ton of actual emissions of each regulated pollutant adjusted annually for increases in the Consumer Price Index as of August 31 of the most recent calendar year. The presumptive fee includes a greenhouse gas (GHG) adjustment based upon the hourly burden for GHG permit activities. This section also provides certain exclusions from the

actual emissions calculation that the state may use, including a 4,000 ton per year cap on actual emissions of regulated pollutants used in the calculation, the actual emissions used in the minimum fee calculation, and actual emissions from insignificant activities not required in the Title V permit application pursuant to 40 CFR § 70.5 (c). "Actual Emissions" is defined for 40 CFR Part 70 sources as follows:

"Actual emissions" means the actual rate of emissions in tons per year of any regulated pollutant (for presumptive fee calculation) emitted from a part 70 source over the preceding calendar year or any other period determined by the permitting authority to be representative of normal source operation and consistent with the fee schedule approved pursuant to this section. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and in-place control equipment, types of materials processed, stored, or combusted during the preceding calendar year or such other time period established by the permitting authority pursuant to the preceding sentence.

Section 70.9 (b)(3) specifies that the state's fee schedule may include emissions fees, application fees, service-based fees, other types of fees, or any combination thereof to meet the fee schedule requirement to cover Title V permit program costs. It further specifies that nothing in 40 CFR § 70.9 shall require the permitting authority to calculate fees on any particular basis or in the same manner for all sources, provided that the permitting authority collects a total amount of fees sufficient to meet the program support requirements of § 70.9 (b)(1).

Section 70.9 (b)(5) specifies that the state shall provide an accounting that its fee schedule results in the collection and retention of revenues sufficient to cover the permit program costs if (i) the state sets a fee schedule that would result in collections less than the presumptive fee schedule, or (ii) EPA has serious questions as to whether the state's fee schedule is sufficient to cover the program costs.

Sections 70.9 (c) and (d) further require the state to provide a demonstration that the collection of fees is sufficient to meet all of the Title V program requirements and that the fees are used solely to cover the costs of meeting those program requirements.

### State Requirements

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.

Section 10.1-1322 of this same law authorizes the State Air Pollution Control Board to adopt requirements for permits and to collect fees from air pollution sources.

Section 10.1-1322 B authorizes the State Air Pollution Control Board to provide for the collection of annual permit program emissions fees from air pollution sources, based upon actual emissions of each regulated pollutant not to exceed 4000 tons per year of each pollutant for each source. The annual permit program emissions fees are not to exceed a base year amount of \$25 per ton using 1990 as the base year, and are to be adjusted annually by the Consumer Price Index. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The statute directs that the fees approximate the direct and indirect costs of administering and enforcing the permit program as required by the Clean Air Act. This section also authorizes the board to collect permit application fee amounts not to exceed \$30,000 from applicants for a permit for a new major stationary source.

Section 10.1-1322.1 of the Virginia Air Pollution Control Law specifies that all moneys collected pursuant to §§ 10.1-1322 and 10.1-1322.2 be paid into the state treasury and credited to a special non-reverting fund known as the Air Pollution Permit Program Fund. Any moneys remaining in this fund are not to revert to the general fund but are to remain in the Fund. Utilization of the fees collected pursuant to this section is to be limited to the agency's direct and indirect costs of processing permits.

Item 369, paragraph B of Chapter 780 of the 2016 Acts of Assembly continued language initially included in item 365, paragraph B of Chapter 3 of the 2012 (Special Session 1) Acts of Assembly authorizing the board to adjust permit program emissions fees collected pursuant to § 10.1-1322 of the Code of Virginia and to establish permit application fees and permit maintenance fees sufficient to ensure that the revenues collected from all fees cover the direct and indirect costs of the program, consistent with the requirements of Title V of the Clean Air Act. It further specified that (i) permit application fees collected not be credited toward the amount of annual emissions fees owed pursuant to § 10.1-1322, (ii) that all fees be adjusted annually by the Consumer Price Index, (iii) that regulations initially implementing these provisions be exempt from Chapter 40 of Title 2.2, Code of Virginia (the Administrative Process Act), and (iv) that any further amendments to the fee schedule beyond those initially implementing these provisions would not be exempt from provisions of the Administrative Process Act.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe 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.*

The purpose of 9VAC5 Chapter 80 is to minimize the emissions of regulated air pollutants from new and modified stationary sources through air permit programs. Minimizing those emissions protects the health, safety and welfare of the general public. Title V of the federal Clean Air Act requires that Title V permit programs be fully funded through Title V program fees. As the permit programs achieve their goal of reducing emissions, Title V permit program fee revenue has decreased and is projected to decrease to the point that it will no longer cover the costs of the Title V permit programs. The purpose of this regulatory action is to (i) increase Title V fees so that they continue to fully fund the Title V permit program, and (ii) to restructure the Title V fee schedule to better reflect the actual costs of the Title V permit program, thereby improving program revenue stability. Fully funding the Title V permit program is essential to continuing to reduce air pollutant emissions in the Commonwealth and continuing to protect the health, safety, and welfare of the citizens of Virginia.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.*

The substantive provisions identified below were developed based on the consensus proposal of a stakeholder advisory group established by the Department that consisted of representatives from industry, environmental groups, and Department staff; Department analysis; and information gathered from the federal statutes, regulations and policies. In addition, the new and increased fees more accurately reflect and evenly distribute the permitting and compliance assurance costs incurred by the Department.

1. Definitions of “greenhouse gases” and “regulated pollutant (for fee calculation),” are added and the definition of “actual emissions” is revised so that emissions of greenhouse gases will be excluded from the calculation of permit program emissions fees.
2. A new section is added to Chapter 80, Article 2 providing an equivalent method of calculating permit program emissions fees applicable to future billing years. In this new section, permit program emission fee rates for billing years 2018 and 2019 are specified, reflecting incremental 18.6% and 15% increases in the permit program emission fee rates over those two years, respectively. Also, a new and equivalent

method of calculating CPI adjustments is provided for billing years after 2019. That new method of calculating CPI adjustments for permit program emissions fees is the same method that is currently used for annual CPI adjustments for permit application fees and annual permit maintenance fees. Provisions for excess emissions fees are unchanged. Various changes are made to the existing permit program emissions fee calculation section as necessary to conform to and implement this new section.

3. A new section is added to Chapter 80, Article 10 specifying new, increased base permit application fee amounts that will be applicable in future years. Annual CPI adjustments are applied as before except the annual adjustment for 2019 is specified to be 10% more than the permit application fee rates applicable in the previous calendar year. Provision is made for applications filed before the effective date of this amendment and modified on or after that date such that the new permit application fee structure is applicable to that application but any permit application fee amount previously paid for that application is credited toward the new permit application fee amount. Various changes are made to the existing permit application fee calculation section as necessary to conform to and implement this new section.

4. A new section is added to Chapter 80, Article 11 specifying new, increased base permit maintenance fee mounts that will be applicable in future years. Annual CPI adjustments are applied as before except that the fee adjustments for certain permit types are individually specified for billing years 2019 and 2020. A new minimum permit maintenance fee is specified for synthetic minor sources and that fee is also adjusted annually. Various changes are made to the existing permit maintenance fee calculation section as necessary to conform to and implement this new section.

### 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.*

1. Public: The primary advantage to the public of this proposed action is that it ensures that the Title V permit program will continue to protect the health and welfare of the Commonwealth’s citizens and ensures that the Commonwealth will continue to maintain control over the implementation of the Title V permit program within the Commonwealth. The primary disadvantage of this proposed action is that some increases in the direct and indirect costs of the Title V permit program will be borne by businesses in the Commonwealth and will be passed along to the citizens of the Commonwealth. Changing the fee structure will affect different businesses differently; some will pay proportionally more in fees, some proportionally less.

2. Department: The primary advantage to the department of this proposed action is that the permit Title V permit program will continue to be fully funded and fully staffed. There are no disadvantages to the department.

### 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 than the applicable legal 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.*

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

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the impacts of 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 of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, 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 agency contact: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov), fax 804-698-4510). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://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.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

### 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.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b>  <b>a) fund source / fund detail; and</b>  <b>b) a delineation of one-time versus on-going expenditures</b></p>	<p>It is not expected that the regulation will result in any cost to the department beyond that currently in the budget. The sources of department funds to carry out this regulation are Title V permit program fees charged to affected entities under the permit program. The activities are budgeted under the following programs</p>
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	(codes)/subprograms (codes): Air Protection Permitting (513025); Air Protection Compliance and Enforcement (513026); Air Protection Planning and Policy (513028); and Air Protection Monitoring and Assessment (513029). The costs are expected to be ongoing.
<b>Projected cost of the new regulations or changes to existing regulations on localities.</b>	The projected cost of the regulation on localities is not expected to be beyond that of other affected entities.
<b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b>	Businesses with potential air pollutant emissions of a magnitude that makes the business subject to the requirements of Title V of the CAAA, or would make the business subject to those requirements but for a synthetic minor permit limiting its potential emissions, would be affected by this amendment to the regulations.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	A total of 560 sources were billed for Title V fees in 2016, all of which would be affected by the proposed changes in Title V fees. Of those, it is estimated that as many as 85% may be small businesses. An additional 115 synthetic minor sources may be affected by the new minimum \$500 maintenance fee, of which as many as 94% may be small businesses.
<b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b> a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.	Program costs are projected to increase by \$2.7 million (to about \$13.5 million annually) by FY 2021. The program cost will be divided among new and existing Title V sources according to the revised fee schedule. Few, if any, small businesses that are already subject to Title V fees will incur any increased costs for reporting, recordkeeping, or other administrative purposes. Small businesses subject to new maintenance fees may incur some additional minor administrative costs with respect to budgeting for and remitting those fees. There are no increased costs to businesses that are related to real estate.
<b>Beneficial impact the regulation is designed to produce.</b>	This regulatory action will increase Title V program fees enough to ensure that the program continues to be fully funded and thereby continue to protect the health and welfare of the citizens of the Commonwealth. This amendment will also restructure the Title V fee schedule to generate a larger proportion of revenue from user fees instead of emissions fees so that fee revenue better reflects the actual costs of the program.

## 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.*

Alternatives to the proposal are being considered by the board. The board has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the board, along with the reasoning by which the board has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies and to be as consistent as possible with the consensus of the stakeholder group. This option is being selected because it meets the stated purpose of the regulatory action (to fully fund the Title V Permit Program) and is the least burdensome of the fee schedules considered.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because any schedule of fees that does not meet the requirements of state and federal law to fully fund the Title V permit program will not adequately protect the health, safety, and welfare of the citizens of Virginia.
3. Take no action to amend the regulations and continue to collect fees in amounts insufficient to fully fund the Title V Permit Program. This option is not being selected because it does not adequately protect the health, safety, and welfare of the citizens of Virginia.

### Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B 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.*

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

This revision meets the minimum requirements of Title V of the federal Clean Air Act and 40 CFR 70.9, and this regulation meets the specific requirements of the 2016 Acts of Assembly in Item 369, paragraph B of Chapter 780. There is a requirement in Chapter 80, Article 2 for applicable owners to annually submit a calculation of actual emission for the calendar year. Without this required emissions report, emissions fees could not be calculated, assessed, and collected, which would cause the Title V permit program to be underfunded contrary to state and federal law. Each of the three articles contains exemptions or fee rate adjustments for certain small businesses. Alternative regulatory methods that lower fees, delay collecting the fees, or exempting small businesses as a class from those fee requirements would make funding the Title V program more expensive for the remaining sources, would make revenue collection more complex and less reliable, and may not adequately fund the Title V permit program as required by state and federal laws.

### Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

**Commenter:** Brett A. Vassey, Virginia Manufacturers Association (VMA)

**Comment:** The VMA urges the DEQ to follow the recommendations of the SAG in developing the new fee structure to support the Title V Program. First, it is essential that Virginia’s Title V Program be adequately funded. The VMA considers critical for Virginia’s businesses that DEQ, not EPA, administer and control the Title V Program in the Commonwealth. To ensure this, Virginia must adequately fund the program. Second, the VMA believes a more equitable distribution of the financial burden of the Title V Program must be another essential feature of a new fee structure. The Title V fee SAG has recommended broadening the financial burden by imposing new or increased fees on more air emission sources in the Commonwealth. These new and increased fees are logically based on the permitting and compliance assurance costs incurred by the DEQ. The VMA believes the new fee allocations recommended by the SAG represent a more equitable apportionment of the financial burden of supporting the DEQ’s implementation of the Title V Program in Virginia.

**Agency Response:** Insofar as possible, DEQ will follow the recommendations of the SAG in developing a regulation that will ensure that the Title V permit program is fully funded and that the fee structure better reflects the costs of the program activities.

**Commenter:** Mike Stoneberger, Advansix Inc.

**Comment:** AdvanSix supports this rulemaking for the following reasons: (a) the Clean Air Act requires fees be charged sufficient to fund the Title V program and a new fee structure is required to fund the program adequately under Federal law; (b) Without adequate funding, DEQ may have to reduce its Title V services causing permitting and other administrative delays and EPA could withdraw Title V delegation and then administer the program itself and we believe that it is in all parties' interest that this not happen, and that DEQ continue to administer a full and responsive Title V permitting program; and (c) The fee structure agreed to by the Advisory Group would move in the direction of charging fees for the services DEQ actually provides and align the fees charged by DEQ more closely with the activities for which DEQ is receiving the fees (in effect, making the user pay for the program).

**Agency Response:** Insofar as possible, DEQ will follow the recommendations of the SAG in developing a regulation that will ensure that the Title V permit program is fully funded and that the fee structure better reflects the costs of the program activities.

### Family impact

*Please assess the impact of this 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.*

It is not anticipated that the proposal will have a direct impact on families; family authority; family rights; family self-sufficiency, self-pride, responsibility; marital commitment; or family income. However, there will be positive indirect impacts of fully funding the Title V permit program. The proposal will ensure that the Commonwealth’s Title V permit program continues to function as effectively as possible, thus contributing to reductions in health and welfare problems associated with air pollution, and indirectly minimizing family health care costs related to health problems that are aggravated by air pollution.

### Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. 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. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the pre-emergency regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
9VAC5 Chapter 80, Article 2 (Permit Program Emissions Fees for Stationary Sources)			
320.		Definitions.	NA.
320 C.		Terms Defined.	Modified the definition of “actual emissions” to incorporate a modified term “regulated pollutant (for fee calculation).” Necessary to exclude emissions of greenhouse gases from the calculation of actual emissions for emission fee purposes.
320 C.		Terms Defined.	Added a definition of “greenhouse gases” from language in 40CFR §70.2. Necessary to exclude emissions of greenhouse gases from the calculation of actual emissions for emission fee purposes.
320 C.		Terms Defined.	Added a definition of “regulated pollutant (for fee calculation)” similar to an analogous term defined in 40CFR §70.2. Necessary to exclude emissions of greenhouse gases from the calculation of actual emissions for emission fee purposes.
340.		The tagline associated with this section is “Annual permit program emissions fee calculation.”	Amended the section tagline to add a time limit for the EPA presumptive emissions fee calculation method described in this section. Necessary to differentiate this section from the following new section that describes a different (but equivalent) method of calculating emissions fees. This section is preserved so that later collection of fees that were due before this time limit are calculated properly.
340 A.		This subsection specifies that the annual permit program base fee rate used to calculate emissions fees shall not exceed \$31.22 per ton of emissions, adjusted annually by the Consumer Price Index (CPI).	Amended this subsection to add a date limit (in terms of when fees were due to the department) for using the specified annual permit program base fee rate to calculate emissions fees. Necessary to differentiate this section from the following new section 342 that describes a different (but equivalent) method of calculating emissions fees for

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			fees assessed (and due) on or after this date.
340 B.		This section specifies that the annual permit program fees, as adjusted annually by the Consumer Price Index (CPI), shall be calculated according to a formula derived from the EPA presumptive emissions fee calculation method in 40 CFR 70.9 using a permit program base fee rate of \$31.22 per ton of actual emissions instead of the \$25 per ton base fee rate used in the federal presumptive fee calculation method.	Amended this subsection to add a date limit (in terms of when fees were due to the department) for using the emissions fee calculation method described in this section. Necessary to differentiate this section from the following new section that describes a different (but equivalent) method of calculating emissions fees for fees assessed (and due) on or after this date.
	342.	None.	Added a section tagline to describe this calculation section and to specify when it becomes effective. Necessary to differentiate this new calculation section from the section 340 method of calculating emissions fees.
	342 A.	None.	Added to specify that a specified new equivalent method of calculating emissions fees be used after the effective date of this regulatory action. Necessary to properly implement the new calculation method.
	342 A 1.	None.	Added to specify how the annual emissions fee is to be calculated (actual emissions multiplied by the annual fee rate). This calculation is equivalent to the calculation equation $B = (A)(F)$ in subsection 340 B. Necessary in order to properly implement the new calculation method.
	342 A 2.	None.	Added to specify that the emissions fee rate will be calculated as specified in subdivisions a through c. Necessary to ensure the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG recommendations as soon as feasible.
	342 A 2 a.	None.	Added to specify an emissions fee rate for billing year 2018 of \$73.01 per ton of emissions, which reflects an 18.6% increase over the 2017 adjusted emissions fee rate per ton of emissions

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			<p>(the 2017 value of F in the equation given in 9VAC5-80-340 B).                      Necessary to ensure the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG recommendations as soon as feasible.</p>
	342 A 2 b.	None.	<p>Added to specify an emissions fee rate for billing year 2019 of \$83.96 per ton of emissions, which reflects an additional 15% increase over the emissions fee rate for billing year 2018.                      Necessary to ensure the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG recommendations as soon as feasible.</p>
	342 A 2 c.	None.	<p>Added to specify that the emissions fee rate for billing years after 2019 will be adjusted annually based upon the change in the CPI over a specified preceding 12-month period.                      Necessary to ensure the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG recommendations as soon as feasible.</p>
	342 A 3.	None.	<p>Added subdivision 3 to specify that the annual CPI adjustment will be based upon the emissions fee rate for the previous year and the change in the CPI value over a specified preceding 12-month period. This CPI adjustment method will produce annual adjustments equivalent to the annual CPI adjustment method described in 9VAC5-80-340 A and B and is consistent with the CPI adjustment method that is already used for annually adjusting other Title V program fees (i.e. Title V permit application and permit maintenance fees). This CPI adjustment method is also consistent with the method proposed for CPI adjustments to future permit application fees (9VAC5-80-2282 A 2) and to future annual permit maintenance fees (9VAC5-80-2342 B 2). Necessary to ensure the Title V permit program is fully funded in years following fiscal year 2019, taken along with other</p>

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			changes implemented in this regulatory action, and to improve the consistency of the Title V program fee regulations.
	342 A 3 a.	None.	Added subdivision 3 a to specify which CPI value will be used in the calculation. Necessary to ensure the Title V permit program is fully funded in years following fiscal year 2019, taken along with other changes implemented in this regulatory action, and to improve the consistency of the Title V program fee regulations.
	342 A 3 b.	None.	Added subdivision 3 b to specify that no CPI adjustment will be made in billing years 2018 and 2019 (for which the emission fee rates are individually specified in subdivision 2 of this subsection). Necessary to ensure the Title V permit program is fully funded in years following fiscal year 2019, taken along with other changes implemented in this regulatory action, and to improve the consistency of the Title V program fee regulations.
	342 B.	None.	Added to require the owner to submit a calculation of the previous calendar year's actual emissions by April 15 of the billing year. Necessary to be consistent with 9VAC5-80-340 C reporting requirements already in effect for Title V program emission fees.
	342 C and D.	None.	Added subsections C and D and subdivisions D 1 and D 2 to allow for reduced emissions fees to be calculated and assessed in the event that the emissions fee revenue calculated in accordance with subsections A and B of this section are in excess of the amount necessary to fund the Title V permit program costs. Necessary to be consistent with 9VAC5-80-340 D and E requirements already in place for Title V program emission fees.
<b>9VAC5 Chapter 80, Article 10 (Permit Application Fees for Stationary Sources)</b>			
2270 A.		General. This is a general requirement for applicable persons to pay an application fee calculated in accordance with 9VAC5-80-2280.	Added a reference to new section 2282 for calculating application fees. Necessary to calculate application fees correctly on and after the effective date of the amendment.
2280.		The tagline associated with this section is "Permit	Amended the section tagline to add a date limit for the calculating application

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		application fee calculation.” This section requires that each application be subject to an application fee based upon the base permit application fee schedule in Table 8-10 A and adjusted annually.	fees in accordance with this section. Amended the subsection to specify that the fee schedule and annual adjustment method in this section only applies to applications received prior to that date. Necessary to differentiate this section from the following new section that provides a different base permit application fee schedule and modifies the annual adjustment language. This section is preserved so that application fees that were due before this time limit are calculated properly.
2280 2.		The annual adjustment of the application fee schedule is specified so as to be based upon the change in the CPI value over the 12-month period ending on August 30 of the preceding calendar year.	Amended the date of the month to be the last day of August to be consistent with the dates upon which the August CPI value is actually based. Necessary to correct a typographical error. This correction will not change the result of the referenced calculation.
	2280 4.	None.	Added subdivision 4 to provide for situations in which an application that has already been submitted is modified after the effective date of the amendment. It requires those applications to be subject to the new fee schedule provisions proposed in 9VAC5-80-2282 B. Necessary to provide for amended applications.
	2282.	None.	Added a section tagline to describe this new section 2282 and to specify when it becomes effective. Necessary to differentiate this new calculation section from the section 2280 method of calculating application fees.
	2282 A.	None.	Added subsection A to specify that the application fee amount depends on the date that the application is received by the regional office, and to require that the application fee be calculated in accordance with subdivisions 1 through 4. Necessary to ensure that permit application fees are calculated properly after the effective date of the amendment.
	2282 A 1.	None.	Added subdivision 1 to specify a new base permit application fee schedule and require that the application fee (i) be based upon the largest base fee amount in Table 8-10B, not the sum of applicable application fee amounts; (ii) be adjusted on January 1 of each year; and (iii) be



Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
			<p>adjusted as required in subdivisions 2 through 4.</p> <p>Necessary to ensure the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action.</p> <p>This change implements the SAG recommendations as soon as feasible consistent with the current requirement of adjusting application fees on January 1 of each year.</p>
	2282 A 2.	None.	<p>Added subdivisions A 2, A 2 a, and A 2 b to specify the method for annually adjusting the base permit application fee amounts. The method prescribed in subdivisions A 2 and A 2 a follows the CPI value adjustment method already in effect as specified in 9VAC5-80-2280 A 2 and A 2 a and is consistent with the new CPI value adjustment method specified for use in annually adjusting future permit program emissions fees proposed in 9VAC5-80-342 A 3. New subdivision 9VAC5-80-2282 A 2 b specifies that there is no CPI adjustment for 2019. This is because a 10% application fee adjustment (provided in new subdivision 9VAC5-80-2282 A 3) is applied in 2019 instead.</p> <p>Necessary to ensure the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action.</p> <p>This change implements the SAG recommendations as soon as feasible.</p>
	2282 A 3.	None.	<p>Added subdivision A 3 to specify that the annual adjustment for 2019 is a 10% increase above in the effective application fee amounts for 2018.</p> <p>Necessary to ensure that the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action.</p> <p>This change implements the SAG recommendations as soon as feasible.</p>
	2282 A 4.	None.	<p>Added subdivision A 4 to specify the fee amount rounding method to be used in calculating the adjusted permit application fees.</p> <p>Necessary to continue using the rounding method currently in effect as specified in 9VAC5-80-2280 A 3.</p>

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	2282 B.	None.	<p>Added subsection B to provide for applications that are received prior to the effective date of this amendment and amended after the effective date of this amendment. It provides that such applications are subject to the new application fee schedule, less any application fee amount previously paid for that application.</p> <p>Necessary to ensure that sources amending their applications pay application fees that are consistent with those in effect during the permit review period.</p>
9VAC5 Chapter 80, Article 11 (Annual Permit Maintenance Fees for Stationary Sources)			
2310 C.		Provides exclusions from applicability under this article (and for paying annual permit maintenance fees) to two groups of sources: (i) stationary sources that began normal operation in the calendar year being assessed, and (ii) small synthetic minor sources that are not synthetic minor 80% sources (SM-80) as defined in 9VAC5-80-2320 D.	<p>Deleted the subdivision C 2 annual permit maintenance fee applicability exclusion for synthetic minor sources that are not SM-80 sources and reorganized the subsection.</p> <p>Necessary to implement a minimum annual permit maintenance fee applicable to all synthetic minor sources and to ensure the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action.</p> <p>This change implements the SAG recommendations as soon as feasible.</p>
2330 A.		Requires applicable sources to pay an annual permit maintenance fee in the amount determined in accordance with the base permit maintenance fee schedule and the annual adjustment method prescribed in 9VAC5-80-2340.	<p>Amended to add a reference to the new annual permit maintenance calculation section that provides an base permit maintenance schedule with increased fee amounts and a modified adjustment schedule.</p> <p>Necessary to calculate annual permit maintenance fees correctly on and after the effective date of the amendment.</p>
2340.		The tagline associated with this section is "Annual permit maintenance fee calculation."	<p>Amended the section tagline to add a date limit for the calculating annual permit maintenance fees in accordance with this section.</p> <p>Necessary to differentiate this section from the following new section that provides a different base permit maintenance fee schedule and modifies the annual adjustment language.</p> <p>This section is preserved so that annual permit maintenance fees that were due before this date limit are calculated properly.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
2340 A.		This subsection requires that each applicable source be assessed an annual permit maintenance fee.	Amended the subsection to specify that the fee required by this section only applies to applications received prior to the effective date of the amendment. Necessary to differentiate this section from the following new section that provides a different base permit maintenance fee schedule and modifies the annual adjustment language.
2340 B 2.		The annual adjustment of the permit maintenance fee schedule is specified so as to be based upon the change in the CPI value over the 12-month period ending on August 30 of the preceding calendar year.	Amended the date of the month to be the last day of August to be consistent with the dates upon which the August CPI value is actually based. Necessary to correct a typographical error. This correction will not change the result of the referenced calculation.
	2340 C.	None.	Added so that the general applicability exclusion for synthetic minor sources that are not SM-80 sources (that was deleted from 9VAC5-80-2320 C 2) is not lost for calculations of annual permit maintenance fees that were due prior to the effective date of this amendment. Necessary to preserve the exclusion for past due fee calculation purposes.
	2342.	None.	Added a section tagline to describe this new section 2342 and to specify when it becomes effective. Necessary to differentiate this new permit maintenance fee calculation section from the section 2340 method of calculating permit maintenance fees.
	2342 A.	None.	Added subsection A to require that sources subject to this article after the effective date of the amendment be assessed a permit maintenance fee. Necessary to ensure that the permit maintenance fees continue to be assessed properly after the effective date of the amendment.
	2342 B.	None.	Added subsection B to require that the amount of the annual permit maintenance fee be calculated in accordance with subdivisions B 1 through B 4. Necessary to ensure that the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action.
	2342 B 1.	None.	Added subdivision B 1: (i) to specify a new base permit maintenance fee

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			<p>schedule for all existing source permit categories; (ii) to add a new minimum base maintenance fee applicable to synthetic minor sources that are not SM-80 sources; (iii) to require that the permit maintenance fee be based upon the largest base fee amount in Table 8-11B, not the sum of applicable maintenance fee amounts; and (iv) to require that the maintenance fee be adjusted annually as required in subdivisions 2 and 3 of this subsection.</p> <p>Necessary to ensure that the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG recommendations as soon as feasible.</p>
	2342 B 2.	None.	<p>Added subdivision B 2 to specify the annual CPI adjustment method to be used for annual maintenance fees. This CPI adjustment method is the same method used for previous CPI adjustment calculations for both permit application fees (Article 10) and permit maintenance fees (Article 11) it and is consistent with the new CPI adjustment method specified for use in annually adjusting future permit program emissions fees proposed in 9VAC5-80-342 A 3.</p> <p>Necessary to ensure that the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG recommendations as soon as feasible.</p>
	2342 B 2 a.	None.	<p>Added subdivision B 2 a to specify the source of the CPI value to be used in the CPI adjustment method provided in subdivision B 2 for permit maintenance fees. This is the same source used previously to determine CPI values for permit maintenance fee adjustments and this subdivision is identical to 9VAC5-80-2340 B 2 a used previously for determining CPI values for maintenance fee adjustments.</p> <p>Necessary to ensure that the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG</p>

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			recommendations as soon as feasible.
	2342 B 2 b.	None.	<p>Added subdivision B 2 b to specify that the annual CPI adjustment method is not to be used to adjust permit maintenance fees for certain stationary source types in years for which the adjustment is specified by the new 9VAC5-80-2342 subdivision B 3.</p> <p>Necessary to ensure that the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG recommendations as soon as feasible.</p>
	2342 B 3.	None.	<p>Added subdivision B 3 to specify annual adjustments to permit maintenance fees for certain stationary source types billed in calendar years 2019 and 2020.</p> <p>Necessary to ensure that the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG recommendations as soon as feasible.</p>
	2342 B 3 a.	None.	<p>Added subdivision B 3 a to specify the adjusted permit maintenance fee amounts for certain stationary source types billed in calendar year 2019. These amounts reflect different increases for different source types as recommended by the SAG.</p> <p>Necessary to ensure that the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG recommendations as soon as feasible.</p>
	2342 B 3 b.	None.	<p>Added subdivision B 3 b to specify the adjusted permit maintenance fee amounts for certain stationary source types billed in calendar year 2020. These amounts reflect different increases for different source types as recommended by the SAG. Permit maintenance fees for source types not specified in this subdivision will be CPI-adjusted in accordance with subdivision B 2.</p> <p>Necessary to ensure that the Title V permit program continues to be fully funded, taken along with other changes implemented in this regulatory action. This change implements the SAG</p>

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			recommendations as soon as feasible.
	2342 B 4.	None.	Added subdivision B 4 to specify the fee amount rounding method to be used in calculating the adjusted annual permit maintenance fees. Necessary to continue using the rounding method currently in effect as specified in 9VAC5-80-2340 B 3.

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