

9 VAC 5 CHAPTER 20.

GENERAL PROVISIONS.

PART I.

Administrative.

9 VAC 5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the

CFR (~~2004~~ 2007) in effect July 1, ~~2004~~ 2007. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means Section 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50 - National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A - Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(b) Appendix B - Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(c) Appendix C - Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(d) Appendix D - Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(e) Appendix E - Reference Method for Determination of Hydrocarbons Corrected for Methane.

(f) Appendix F - Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(g) Appendix G - Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(h) Appendix H - Interpretation of the National Ambient Air Quality Standards for Ozone.

(i) Appendix I - Reserved.

(j) Appendix J - Reference Method for the Determination of Particulate Matter as PM₁₀ in the Atmosphere.

(k) Appendix K - Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(2) 40 CFR Part 51 - Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Appendix M - Recommended Test Methods for State Implementation Plans.

Appendix S - Emission Offset Interpretive Ruling.

Appendix W - Guideline on Air Quality Models (Revised).

Appendix Y - Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 58 - Ambient Air Quality Surveillance.

Appendix B - Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring.

(4) 40 CFR Part 60 - Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9 VAC 5-50-400 et seq.) of Part II of ~~Chapter 50, Rule 5-5, Environmental Protection Agency Standards of Performance for New Stationary Sources~~ 9 VAC 5-50 (New and Modified Sources).

(5) 40 CFR Part 61 - National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9 VAC 5-60-60 et seq.) of Part II of ~~Chapter 60, Rule 6-1, Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants~~ 9 VAC 5-60 (Hazardous Air Pollutant Sources).

(6) 40 CFR Part 63 - National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9 VAC 5-60-90 et seq.) of Part II of ~~Chapter 60, Rule 6-2, Environmental Protection~~

~~Agency National Emission Standards for Hazardous Air Pollutants for Source Categories~~ 9 VAC 5-60 (Hazardous Air Pollutant Sources).

(7) 40 CFR Part 59, Subpart D—National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A--“Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.”

(8) 40 CFR Part 64, Compliance Assurance Monitoring.

(9) 40 CFR Part 72, Permits Regulation.

(10) 40 CFR Part 73, Sulfur Dioxide Allowance System.

(11) 40 CFR Part 74, Sulfur Dioxide Opt-Ins.

(12) 40 CFR Part 75, Continuous Emission Monitoring.

(13) 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program.

(14) 40 CFR Part 77, Excess Emissions.

(15) 40 CFR Part 78, Appeal Procedures for Acid Rain Program.

(16) 40 CFR 59 Subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

b. Copies of the document identified in subdivision (1) of this subdivision, and Volume I and Supplements A through C of the document identified in subdivision (2) of this subdivision, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision (2) of this subdivision may be obtained online from EPA's Technology Transfer Network at <http://www.epa.gov/ttn/chief/ap42/index/html>.

3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

4. American Society for Testing and Materials (ASTM)

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Method for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Method for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films (1998).

(18) D86-01, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2001).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) ~~D-3912-95~~ D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) ~~D-4082-02~~ D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants".

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API)

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH)

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA)

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1--1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York, 10016; phone (800) 843-2763.

9. American Hospital Association (AHA)

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD)

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD)

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.

12. California Air Resources Board (CARB)

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure For Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure For Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Test Method 512, "Determination Of Fuel Flow Rate For Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(4) Test Method 513, "Determination Of Permeation Rate For Spill-Proof Systems" (July 6, 2000).

(5) Test Method 310 (including Appendices A and B), "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products" (July 18, 2001).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.

14. American Furniture Manufacturers Association

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

9 VAC 5 CHAPTER 40.

EXISTING SOURCES.

PART II.

Emission Standards.

ARTICLE 52.

Emission Standards for Stationary Sources Subject to

Case-by-Case BART Determinations.

9 VAC 5-40-7550. Applicability and designation of affected facility.

A. Except as provided in subsection C of this section, the affected facility to which the provisions of this article apply is each BART-eligible source that emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory federal class I area.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Exempted from the provisions of this article are the following:

1. Any BART-eligible source with the potential to emit less than 40 tons per year of SO₂ or NO_x, or less than 15 tons per year of PM₁₀.

2. Any existing stationary facility subject to the requirement under 9 VAC 5-40-7580 to install, operate, and maintain BART for which the board has granted an exemption in accordance with 9 VAC 5-40-7560 or for which the administrator has granted an exemption under 40 CFR 51.303 with which the board concurs.

3. The provisions of this article do not apply to sources subject to Part IV (9 VAC 5-140-3010 et seq.) of 9 VAC 5-140 (Regulation for Emissions Trading).

9 VAC 5-40-7560. Exemptions from control.

A. Any existing stationary facility subject to the requirement to install, operate, and maintain BART may apply to the board for an exemption from that requirement. An application under this subsection shall include all available documentation relevant to the impact of the source's emissions on visibility in any mandatory federal class I area and a demonstration by the existing stationary facility that it does not or will not, by itself or in combination with other sources, emit any air pollutant which may be reasonably anticipated to cause or contribute to a significant impairment of visibility in any mandatory federal class I area.

B. Any fossil-fuel fired power plant with a total generating capacity of 750 megawatts or more may receive an exemption from BART only if the owner demonstrates to the

satisfaction of the board that the power plant is located at such a distance from all mandatory federal class I areas that it does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such mandatory federal class I area.

C. The existing stationary facility shall give prior written notice to all affected federal land managers of any application for exemption under this section. The federal land manager may provide an initial recommendation or comment on the disposition of such application. Such recommendation, where provided, must be part of the exemption application. This recommendation is not to be construed as the concurrence required under subsection D of this section. The board, within 90 days of receipt of an application for exemption from control, will provide notice of receipt of an exemption application and notice of opportunity for public hearing on the application. After notice and opportunity for public hearing, the board may grant or deny the exemption.

D. An exemption granted by the board will be effective only upon concurrence by all affected federal land managers and the administrator with the board's determination.

9 VAC 5-40-7570. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9 VAC 5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

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

"BART-eligible source" means an existing stationary facility as defined in this subsection.

"Best Available Retrofit Technology" or "BART" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation shall be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

"Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

1. Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input,
2. Coal cleaning plants (thermal dryers),
3. Kraft pulp mills,
4. Portland cement plants,
5. Primary zinc smelters,
6. Iron and steel mill plants,
7. Primary aluminum ore reduction plants,
8. Primary copper smelters,
9. Municipal incinerators capable of charging more than 250 tons of refuse per day,
10. Hydrofluoric, sulfuric, and nitric acid plants,
11. Petroleum refineries,
12. Lime plants,
13. Phosphate rock processing plants,
14. Coke oven batteries,
15. Sulfur recovery plants,
16. Carbon black plants (furnace process),
17. Primary lead smelters,

18. Fuel conversion plants,

19. Sintering plants,

20. Secondary metal production facilities,

21. Chemical process plants,

22. Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,

23. Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels,

24. Taconite ore processing facilities,

25. Glass fiber processing plants, and

26. Charcoal production facilities.

“Federal class I area” means any federal land that is classified or reclassified class I.

“Federal land manager” or “FLM” means the secretary of the department with authority over the federal class I area (or the secretary's designee).

“Federally enforceable” means all limitations and conditions which are enforceable by the administrator under the federal Clean Air Act including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Parts 51, 52, or 60.

“Fugitive emissions” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

“In existence” means that the owner has obtained all necessary preconstruction approvals or permits required by federal, state, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner, to undertake a program of construction of the facility to be completed in a reasonable time.

“In operation” means engaged in activity related to the primary design function of the source.

“Integral vista” means a view perceived from within the mandatory federal class I area of a specific landmark or panorama located outside the boundary of the mandatory federal class I area.

“Mandatory federal class I area” means any area identified in subpart D of 40 CFR Part 81.

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

“Reasonably attributable” means attributable by visual observation or any other technique the board deems appropriate.

“Regional haze” means visibility impairment that is caused by the emission of air pollutants from numerous sources located over a wide geographic area. Such sources include, but are not limited to, major and minor stationary sources, mobile sources, and area sources.

“Secondary emissions” means emissions which occur as a result of the construction or operation of an existing stationary facility but do not come from the existing stationary facility. Secondary emissions may include, but are not limited to, emissions from ships or trains coming to or from the existing stationary facility.

“State operating permit” means a permit issued under the Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5-80 (Permits for Stationary Sources).

“State operating permit program” means the permit program established by and codified in Article 5 (9 VAC 5-80-800 et seq.) of Part II of 9 VAC 5-80 (Permits for Stationary Sources).

“Visibility-impairing pollutants” means sulfur dioxide (SO₂), nitrogen oxides (NO_x), and particulate matter. PM₁₀ may be used as an indicator for particulate matter. Volatile organic compounds (VOCs) and ammonia and ammonia compounds may be considered to be visibility-impairing pollutants if the board determines that emissions of these pollutants may have an impact on visibility impairment in an area.

9 VAC 5-40-7580. Standard for regional haze pollutants.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any visibility-impairing pollutants in excess of emission limitations representing BART, as reflected in any term or condition that may be placed upon a permit for the facility.

B. State operating permits may be issued at the discretion of the board containing such terms and conditions, including schedules for compliance, as may be necessary to implement a BART determination under 9 VAC 5-40-7590 for the emissions of any visibility-impairing pollutant that may be emitted from the affected facility.

C. A permit may be issued under subsection B of this section regardless of any other permits in force provided that it does not contravene any more restrictive provision of any of the other permits.

9 VAC 5-40-7590. Criteria and procedures for making BART determinations.

The criteria and procedures for making BART determinations shall be as follows.

1. The determination of BART shall be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source that is subject to BART. In this analysis, the board will take into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, and the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

2. The determination of BART for fossil-fuel fired power plants having a total generating capacity greater than 750 megawatts shall be made pursuant to the guidelines in Appendix Y of 40 CFR Part 51 (see 9 VAC 5-20-21).

3. If the board determines in establishing BART that technological or economic limitations on the applicability of measurement methodology to a particular source would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof, to require the application of BART. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice or operation, and must provide for compliance by means which achieve equivalent results.

4. Each source subject to BART shall install and operate BART as expeditiously as practicable, but in no event later than (insert date 5 years after the effective date of this article).

5. Each source subject to BART shall maintain the control equipment required by this article and establish procedures to ensure such equipment is properly operated and maintained.

9 VAC 5-40-7600. Standard for visible emissions.

The provisions of Article 1 (9 VAC 5-40-60 et seq.) of this part apply.

9 VAC 5-40-7610. Standard for fugitive dust/emissions.

The provisions of Article 1 (9 VAC 5-40-60 et seq.) of this part apply.

9 VAC 5-40-7620. Standard for odor.

The provisions of Article 2 (9 VAC 5-40-130 et seq.) of this part apply.

9 VAC 5-40-7630. Standard for toxic pollutants.

The provisions of Article 4 (9 VAC 5-60-200 et seq.) of Part II of 9 VAC 5-60 (Hazardous Air Pollutant Sources) apply.

9 VAC 5-40-7640. Compliance.

The provisions of 9 VAC 5-40-20 (Compliance) apply.

9 VAC 5-40-7650. Compliance schedules.

A. Owners shall comply with the emission standards in this article as expeditiously as possible but in no event later than (insert date 5 years after the effective date of this article).

B. Owners of affected facilities shall comply with the provisions of subsection A of this section by adhering to the increments of progress contained in a permit issued under 9 VAC 5-30-7580 B.

9 VAC 5-40-7660. Test methods and procedures.

The provisions of 9 VAC 5-40-30 (Emission testing) apply.

9 VAC 5-40-7670. Monitoring.

The provisions of 9 VAC 5-40-40 (Monitoring) apply.

9 VAC 5-40-7680. Notification, records and reporting.

The provisions of 9 VAC 5-40-50 (Notification, records and reporting) apply.

9 VAC 5-40-7690. Registration.

The provisions of 9 VAC 5-20-160 (Registration) apply.

9 VAC 5-40-7700. Facility and control equipment maintenance or malfunction.

The provisions of 9 VAC 5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9 VAC 5-40-7710. Permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9 VAC 5-50 (New and Modified Sources) and 9 VAC 5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

2. Reconstruction (replacement of more than half) of a facility.

3. Modification (any physical change to equipment) of a facility.

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

6. Operation of a facility.

I certify that this regulation is full, true, and correctly dated.

(Signature)

David K. Paylor, Director

Department of Environmental Quality

Date: _____