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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	Primary action: Article 45, 9VAC5-40 Secondary action: 9VAC5-20-21
<b>Regulation title(s)</b>	Regulations for the Control and Abatement of Air Pollution
<b>Action title</b>	Amend commercial/industrial/solid waste incinerator regulation to incorporate new EPA requirements (Rev. F16)
<b>Final agency action date</b>	September 9, 2016

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

On June 23, 2016 (81 FR 40956), the U.S. Environmental Protection Agency (EPA) amended the emissions guidelines for commercial/industrial/solid waste incinerators, Subpart DDDD of 40 CFR Part 60. The amendments were made in order to (i) revise the definitions of "continuous emission monitoring system data during startup and shutdown periods" and "kiln"; (ii) revise the particulate matter limit for the waste-burning kiln subcategory; (iii) revise the fuel variability factor for coal-burning energy recovery units; and (iv) remove the provisions for affirmative defense. Virginia implements Subpart DDDD through Article 45, Emission Standards for Commercial/Industrial Solid Waste Incinerators, 9VAC5-40-6250 et seq. of 9VAC5-40 (Existing Stationary Sources). Although the provisions of Subpart DDDD are adopted by reference into Article 45, some revisions to Article 45 are needed in order for it to correctly track with the EPA revisions.

### 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.*

EPA - U.S. Environmental Protection Agency

**Statement of final agency action**

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

On September 9, 2016, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled Regulations for the Control and Abatement of Air Pollution, specifically, Article 45 , Emission Standards for Commercial/Industrial Solid Waste Incinerators, 9VAC5-40-6250 et seq. of 9VAC5-40 (Existing Stationary Sources). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. EPA regulations.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

**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 these regulation amendments will have a direct impact on families.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5-20-21 B		Lists documents incorporated by reference.	Update reference to the most recent (2016) version of the Code of Federal Regulations;

			needed in order to adopt the federal regulations by reference.
9VAC5-40-6250 A		Describes applicability of the regulation.	Revised to correspond to EPA changes to the underlying federal rule; needed in order for the state to properly implement the federal rule.
9VAC5-40-6440 B		Facility and control equipment maintenance or malfunction requirements	Revised to correspond to EPA changes to the underlying federal rule; needed in order for the state properly implement the federal rule.
9VAC5-40-6520		Documents incorporated by reference	Revised to correspond to EPA changes to the underlying federal rule; needed in order for the state to properly implement the federal rule.

### 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.*

These regulations meet the minimum requirements of the federal Clean Air Act and the minimum requirements of 40 CFR Part 60. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum federal requirements. Any such changes would compromise the effectiveness of the regulations in protecting the health and welfare of the public, and could potentially subject the Commonwealth to federal control over the state permitting program.

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