

Virginia Regulatory Town Hall

Exempt Action Final Regulation Agency Background Document

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| Agency Name: | State Air Pollution Control Board |
| Regulation Title: | Regulations for the Control and Abatement of Air Pollution |
| Primary Action: | Article 54 (9 VAC 5-40-7950 et seq.) of 9 VAC 5 Chapter 40 |
| Secondary Action(s): | None. |
| Action Title: | Emission Standards for Large Municipal Waste Combustors (Revision B03) |
| Date: | April 7, 2003 |

Where an agency or regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 2.2-4100 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their regulations in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

This agency background document may be used for actions exempt pursuant to § 2.2-4006 A 1 through 4 at the final stage. Note that agency actions exempt pursuant to § 2.2-4006 A 1 through 4 of the APA do not require filing with the Registrar at the proposed stage.

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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

The regulation applies to large municipal waste combustors (MWCs), and includes emission limits for particulate matter, carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury. Special large MWC operator training and qualification requirements are included in order to assure proper facility operation and compliance with the emissions limitations. Compliance, emissions testing, and monitoring requirements are delineated, as well as recordkeeping and reporting of such test results. Finally, specific compliance schedules are provided.

References to state regulations have been replaced with references to federal regulations in order to ensure that the regulation is identical to the federal regulation. Language has also been added or revised in order to clarify the distinctions between federal and state requirements. Additionally, minor revisions have been made for clarity and consistency.

Statement of Final Agency Action

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

On April 7, 2003, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution", specifically, Emission Standards for Large Municipal Waste Combustors (9 VAC 5 Chapter 40, Article 54). The regulation amendments are to be effective on July 1, 2003.

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. Environmental Protection Agency (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.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

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. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A [2, 3, 4 a, 4 b or 4 c] of the Administrative Process Act are available upon request.

Section 111(d) of the federal Clean Air Act requires that each state submit a plan which will (i) establish standards of performance for any existing source for any air pollutant for which criteria have not been issued or which is not included on a list published under § 108(a) (or emitted from a source category which is regulated under § 112 or 112(b)) but to

which a standard of performance under this section would apply if such existing source were a new source, and (ii) provides for the implementation and enforcement of such standards of performance. The EPA Administrator has the authority to prescribe a plan for a state in cases where the state fails to submit a plan and to enforce the provisions of such plan in cases where the state fails to enforce them.

Section 129 of the federal Clean Air Act requires that EPA establish standards of performance for both new and existing solid waste combustion sources, with new sources covered under § 129(a) and existing sources covered under § 129(b).

40 CFR Part 60 subpart B of the Code of Federal Regulations provides the criteria for adoption and submittal of state plans for designated facilities covered by §§ 111(d) and 129. The emission guidelines established by EPA under the provisions of § 129(b) of the Act are also contained in 40 CFR Part 60.

40 CFR Part 60, subpart Cb (62 FR 45116, August 25, 1997) provides the emission guidelines for large MWCs. The regulation that the state develops based on the emission guidelines must be at least as protective as the guidelines.

Family Impact Statement

Please provide an analysis of the impact of the 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; 4) increase or decrease disposable family income.

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