

Virginia Regulatory Town Hall

Exempt Agency Proposed Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Variance for International Paper Franklin Paper Mill
Primary Action:	9 VAC 5-230
Secondary Action(s):	none
Action Title:	International Paper Variance (Rev. DV)
Date:	July 9, 2005

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*), 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 § 2.2-4007 M, § 2.2-4013 E, § 2.2-4014 D, and § 2.2-4015 C at the proposed stage. Please refer to the *Virginia Register Form, Style and Procedure Manual* for more information.

Summary

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provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed.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

The regulation grants a variance which allows the International Paper Company to comply with the variance and an associated federally enforceable state operating permit as an alternate demonstration of compliance with provisions of the regulations of the board pertaining to new source review and new source control technology review for the Franklin Paper Mill. The variance establishes emission caps that limit the site-wide emissions of the Franklin Paper Mill for the duration of the variance.

Legal Authority

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation proposed. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 10.1-1307 C 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 grant local variances from regulations and issue orders to that effect. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final order and variance and (ii) the variance qualifies as an exemption under § 2.2-4007 M, § 2.2-4013 E, § 2.2-4014 D, and § 2.2-4015 C of the Administrative Process Act are available upon request.

Comparison with Federal Requirements

Please describe the provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.

No provisions of the proposed variance are more restrictive than applicable federal requirements.

Localities Particularly Affected

Please provide the identity of any localities particularly affected by the proposed regulation.

The localities particularly affected are the Cities of Franklin and Suffolk and the County of Isle of Wight.

Additional Information

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

The text of the proposed variance is attached.

Family Impact Statement

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

It is not anticipated that this variance will have a direct impact on families. However, there will be positive indirect impacts in that the variance 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.

TEMPLATES\VARIANCE\TH07

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Franklin, Virginia on April 20, 2005. Eighty-five persons attended the hearing, with 6 of those offering testimony; and 17 additional written comments were received during the public comment period. As required by law, notice of this hearing was given to the public on or about March 21, 2005 in the Virginia Register and in a newspaper of general circulation in the affected Air Quality Control Region. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the Department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The Board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The Board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT:** General support.

COMMENTER: Various

TEXT: Letters or e-mails of support were received from each of the following:

Phillip A. Bradshaw, Chairman, Isle of Wight County Board of Supervisors
Danielle H. Yarber, Vice President / General Manager of XPEDX

Teresa B. Beale, Executive Director of Franklin/Southampton Area
Chamber of Commerce

Douglas W. Boyce, President, Paul D. Camp Community College

Stephen D. Haner, Vice President for Public Policy, Virginia Chamber
of Commerce

Harry J. Acker, General Plant Manager, International Paper,
Chesapeake Container Plant

James P. Councill, III, Mayor, City of Franklin

Rowland L Taylor, Franklin City Manager,

J. Randy Forbes, Congressman, 4th congressional district

Wade Wright, IP employee

Clayton Louis Best, II, citizen

Dean A. Bailey, Regulatory and Governmental Affairs Manager,
Virginia Manufacturers Association

L. Louise Lucas, State Senator, 18th District

William K. Barlow, Delegate for 64th District

Frederick M. Quayle, State Senator, 13th District
J. Paul Councill, Jr., Delegate for 75th District

RESPONSE: Support for the proposal is appreciated.

2. **SUBJECT:** 9 VAC 5-230-20, definitions.

COMMENTER: International Paper

TEXT: The abbreviation “Inc.,” in the definition of “FESOP” should be removed so that this section of the regulation uses the legal name of the Company.

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

3. **SUBJECT:** 9 VAC 5-230-20, definitions.

COMMENTER: International Paper

TEXT: The phrase “Physical or operational change” has a specific meaning within the context of 9 VAC 5 Chapter 230. Accordingly, the definition for this phrase should incorporate the regulatory language regarding such changes from existing Virginia regulations to avoid misinterpretation, as follows:

“Physical or operation change” means any physical change or change in the method of operation of the affected facility that involves the addition of a new emissions unit.

RESPONSE: This definition was created specifically for this regulation and, as the commenter states, has a specific meaning within the context of the regulation. As such, it has a different meaning and use from the term “physical change or change in the method of operation” as used elsewhere in the regulations. Even though there are similarities in concept between the two terms, they mean different things in different contexts, and it is important to maintain this distinction.

No changes have been made to the proposal based on this comment.

4. **SUBJECT:** 9 VAC 5-230-20, definitions.

COMMENTER: International Paper

TEXT: Because the sawmill operated by IP’s Wood Products Division adjacent to the Franklin Mill is not intended to be covered by the site-wide emissions cap, the definition of “Site” should be modified as follows

to avoid misinterpretation:

“Site” and “Facility” and “Franklin Paper Mill” mean the Kraft Paper Mill located on the contiguous property at 34040 Union Camp Drive, Franklin, Virginia, under common control by International Paper Company, and its successors in ownership.”

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal. The intent of the cap is to cover the stationary source. Under the new source review and Title V permit programs, the stationary source consists of all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Although the Wood Products Division is located on contiguous property and is under the control of the same persons, it is not in the same industrial grouping as the stationary source to which the cap is intended to apply. It is therefore appropriate to exclude it from the sitewide emissions cap.

5. **SUBJECT:** 9 VAC 5-230-40, sitewide emissions caps.

COMMENTER: International Paper

TEXT: The regulation stipulates that IP must comply with the emission cap levels specified in 9 VAC 5-230-40 A. The cap levels listed, however, include VOC and TRS emission reductions that IP will not be able to be achieved until the vent collection and control equipment needed to comply with the 40 CFR 63 Subpart S High Volume, Low Concentration (HVLC) MACT requirements has been installed. In addition, the cap levels include adjustments for SO₂, NO_x and CO emissions that will collaterally increase as a result of compliance with the HVLC provisions of Subpart S. IP will be unable to comply with the VOC and TRS emission caps in the draft regulation should it choose to operate under the caps prior to installation and startup of the Subpart S HVLC controls.

As discussed with DEQ Tidewater staff on April 12 and as was done in 9 VAC Chapter 190 for Merck & Co., Inc., this section should be modified to include two sets of emission caps, one corresponding to operation prior to implementation of the Subpart S HVLC emission controls, and the second corresponding to operation after compliance with the HVLC requirements of Subpart S has been demonstrated, as follows:

9 VAC 5-230-40. Site-wide emission caps.

A. On or after the date that International Paper is granted authority to operate under the provisions of this chapter and the FESOP, no owner or other person shall cause or permit to be discharged into the atmosphere from the affected facility any emissions in excess of the site-wide emissions caps set forth in

subdivisions 1 through 10 of this subsection.

1. For particulate matter (PM), the emission cap shall be 1165.8 tpy
2. For particulate matter (PM₁₀), the emission cap shall be 804.4 tpy
3. For sulfur dioxide (SO₂), the emission cap shall be 7890.0 tpy
4. For oxides of nitrogen (NO_x), the emission cap shall be 2999.5 tpy
5. For carbon monoxide (CO), the emission cap shall be 2568.4 tpy
6. For volatile organic compounds (VOC), the emission cap shall be 1208.5 tpy
7. For total reduced sulfur (TRS), the emission cap shall be 277.9 tpy
8. For lead, the emission cap shall be 0.135 tpy
9. For sulfuric acid mist (H₂SO₄), the emission cap shall be 100.5 tpy
10. For fluorides, the emission cap shall be 20.4 tpy

B. Upon demonstration of compliance with the alternative HAP emission standards under 40 CFR 63 Subpart S, the site-wide emission caps shall be adjusted as follows:

1. The SO₂ emission cap shall be increased to 7900.3 tons/yr
2. The NO_x emission cap shall be increased to 2999.6 tons/yr
3. The CO emission cap shall be increased to 2574.3 tons/yr
4. The VOC emission cap shall be reduced to 693.5 tons/yr
5. The TRS emission cap shall be reduced to 223.2 tons/yr

C. Compliance with the emission caps set forth in subsections A and B of this section shall be based on a rolling 12 month sum.

RESPONSE: This comment is acceptable and appropriate changes have been made to the proposal. In order to implement the commenter's request, less restrictive interim caps have been established in 9 VAC 5-230-40 A for VOCs and TRS. The final caps from the original proposal have been reestablished in 9 VAC 5-230-40 B and shall take effect on the earlier of (i) the date that IP demonstrates compliance with the alternative emission standards in 40 CFR Part 63, Subpart S or (ii) April 17, 2007.

6. **SUBJECT:** 9 VAC 5-230-40, sitewide emissions caps.

COMMENTER: International Paper

TEXT: Former subdivision C (renumbered to subdivision D to be consistent with the other suggested changes to 9 VAC 5-230-40) should be clarified as follows to ensure that IP is only prohibited from utilizing emission reductions required by future regulations to comply with the cap. As such, incidental reductions of other pollutants that may result from compliance with a future regulation would remain available for IP to use for cap compliance purposes. This is consistent with the approach taken in § 173(c)(2) of the Clean Air Act. In addition, since IP would need to count incidental emission

increases (such as NOx emissions resulting from the use of an RTO), it should not be prohibited from taking credit for incidental emission decreases (such as non-HAP VOC emissions reduced by an RTO pursuant to a future MACT standard).

D. If International Paper becomes subject to future regulations, International Paper may not use the emission credits obtained from the required emissions reductions to comply with the emission caps.

RESPONSE: If International Paper is required in a future MACT to reduce a HAP which is also categorized as being PM or a VOC, then the facility should not be allowed to use the required reduction of HAP as credit toward the PM or VOC cap. This is because the HAP is a component of either PM or VOC, which the MACT is requiring to be reduced. Note too that § 173(c)(2) applies to criteria pollutants, not HAPs. Finally, such an approach goes against the basic principle of emissions caps: to facilitate reductions, and make progress toward lowering emissions.

No changes have been made to the proposal based on this comment.

7. **SUBJECT:** 9 VAC 5-230-50, new source review program and registration requirements.

COMMENTER: International Paper

TEXT: Subdivision C should be reworded as follows to avoid misinterpretation:

C. Except for the pollutants specified 9 VAC 5-230-40 A and B, compliance with this chapter does not relieve IP from obligations to comply with requirements addressing emissions of hazardous air pollutants under Articles 4 (9 VAC 5-60-200 et seq.) and 5 (9 VAC 5-60-300 et seq.) of 9 VAC 5 Chapter 60.

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

8. **SUBJECT:** 9 VAC 5-230-70, federal operating permits.

COMMENTER: International Paper

TEXT: The administrative amendments to the FESOP should also be incorporated into the Title V permit using an administrative amendment. In addition, the initial FESOP should be incorporated into the facility's current Title V permit using either as an administrative amendment or minor permit modification. Accordingly, subdivision A should be reworded as follows:

A. International Paper shall be subject to the provisions of 9 VAC 5 Chapter 80, Part II, Article 1 (9 VAC 5-80-50 et seq.) except that the FESOP and

documentation submitted in obtaining the FESOP are deemed sufficient for the permit application requirements pertaining to the applicable requirements in the FESOP and may be incorporated into the Federal Operating Permit using administrative amendment [or minor permit modifications] procedures of 9 VAC 5-80-200 [or 210]. For applicable requirements outside of the FESOP, International Paper shall submit information on standard forms provided by the department, or in accordance with instructions accompanying those forms, or as otherwise acceptable to the department. The FESOP shall also provide that once the FESOP is amended in accordance with administrative amendment procedures, International Paper may utilize the administrative amendment procedures to effectuate corresponding changes to the Federal Operating Permit.

RESPONSE: The purpose of the variance is to provide the source relief from certain aspects of new source review, and to address source-specific issues associated with the new source review program. Because the purpose of the variance is to address new source review, it is not appropriate to make changes to the variance associated with Title V, which is an entirely different program serving an entirely different purpose.

No changes have been made to the proposal based on this comment.

9. **SUBJECT:** 9 VAC 5-230-80, FESOP issuance and amendments.

COMMENTER: International Paper

TEXT: For clarity, the phrases “administrative permit amendments” and “administrative permit amendment” everywhere in subdivision F should be followed by “to the FESOP.”

RESPONSE: Given that there is only one permit (the FESOP) being addressed in this variance, there is no need to reiterate that administrative permit amendments apply only to the sole permit being discussed.

No changes have been made to the proposal based on this comment.

10. **SUBJECT:** 9 VAC 5-230-100, applicability of future regulation amendments.

COMMENTER: International Paper

TEXT: The following language, similar to language in 9 VAC 5-190-100 (pertaining to the site-wide emission caps variance for the Merck Stonewall Plant) should be added to this section:

In any action to amend this chapter, the board shall, to the maximum extent possible, preserve the operating flexibility and regulatory simplification achieved by the International Paper Environmental Innovation Project and justified by the superior environmental performance it provides.

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

11. **SUBJECT:** 9 VAC 5-230-110, termination of authority to operate under this chapter and FESOP.

COMMENTER: International Paper

TEXT: The phrase “pursuant to paragraphs A.1 to A.4 of this section” should be inserted after the phrase “finds cause” in subdivision B to clearly delineate the conditions under which authority to operate under Chapter 230 and the FESOP may be terminated.

RESPONSE: Limiting the reasons for terminating the authority to operate under the variance is inconsistent with policy reflected in other regulations of the board.

No changes have been made to the proposal based on this comment.

12. **SUBJECT:** 9 VAC 5-230-110, termination of authority to operate under this chapter and FESOP.

COMMENTER: International Paper

TEXT: Subdivision B 2 should be modified as follows to clarify that the DEQ may pursue corrective action, such as negotiated settlements or compliance schedules, rather than only permit termination:

2. Within 30 days of receiving this notification International Paper may take corrective action to remedy the cause of the termination. If this remedy is deemed acceptable by the department, the action to terminate the authority to operate under this chapter and the FESOP may be withdrawn. Otherwise the authority to operate under this chapter and the FESOP may be terminated. Nothing in this section shall be construed to require the department to terminate this permit or to prevent the department from entering into a negotiated agreement such as a compliance schedule or administrative order to resolve the issue leading to the notice of termination.

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

13. **SUBJECT:** 9 VAC 5-230-110, termination of authority to operate under this chapter and FESOP.

COMMENTER: International Paper

TEXT: Subdivision B 3 should be modified as follows to clarify procedures for establishing new emission limits at the facility in the event of

permit termination:

3. If the authority to operate under this chapter and the FESOP is terminated for cause under paragraphs A.1 to A.4, International Paper shall submit an appropriate application with an allocation of the emissions allowed under the emissions cap in the FESOP to the units then existing at the facility. The Department shall allocate the emissions among emission units or groups of emission units at the facility and reflect such allocation in a new permit. During the interim period, for physical changes or changes in the method of operation undertaken at the facility, International Paper shall comply with the requirements of this chapter, the FESOP and the current Title V federal operating permit until the new permit is issued.

RESPONSE: This action represents only the second time in which the board has ever issued a variance of this type. Furthermore, the board has never dealt with an actual termination of authority to operate in a permit for this type of situation. It is therefore difficult to anticipate exactly how emissions changes would be addressed in some hypothetical future situation where termination of authority would occur. It is also important that potential future board actions in this regard not be artificially limited. The purpose of the variance is to address a specific situation for the facility at this point in time, not to attempt to address potential scenarios.

No changes have been made to the proposal based on this comment.

14. **SUBJECT:** 9 VAC 5-230-120, review and confirmation of this chapter by board.

COMMENTER: International Paper

TEXT: Since IP will necessarily be a party to any review of the variance authorized by 9 VAC 5-230-120, subdivision A should be reworded as follows:

A. Within four years of the effective date of this chapter, the department (in consultation with International Paper) shall perform an analysis of this chapter and provide the board with a report on the results. The analysis shall include any recommendations (including International Paper's response) for amendment to or repeal of the this chapter based on (i) the needs of the Commonwealth's overall air quality management strategy; (ii) current state and federal statutory and regulatory requirements; (iii) an assessment of the effectiveness of this chapter; (iv) a reevaluation of the appropriateness of the emissions caps, including the need for increasing or decreasing the emission caps; and (v) any other factors the department may determine are necessary to include for consideration in review of this chapter. The department shall also include a recommendation for reapportionment of emissions in event of the repeal of this chapter.

RESPONSE: The process for reviewing the chapter is based on an established procedure in which public participation is completely open and

unlimited. It would be inappropriate to suggest that International Paper's viewpoints and positions should have more influence on the process than those of any other member of the public.

No changes have been made to the proposal based on this comment.

15. **SUBJECT:** 9 VAC 5-230-120, review and confirmation of this chapter by board.

COMMENTER: International Paper

TEXT: Subdivision B should be simplified as follows to avoid misinterpretation and to clarify that continuing Chapter 230 without amendment is an acceptable outcome of the Department's analysis:

B. If the board determines that cause exists to amend or repeal this chapter upon review of the Department's analysis, the board shall authorize the Department to initiate the applicable regulatory process to carry out the decision of the board.

RESPONSE: This provision is based on established procedures that pertain to the periodic review process required of all regulations. The existing language already indicates that continuing the chapter without amendment is an acceptable outcome, and no additional language to this effect is necessary.

No changes have been made to the proposal based on this comment.

16. **SUBJECT:** General support.

COMMENTER: Various

TEXT: Statements of support were presented at the hearing by each of the following:

John Rankin, the Mill Manager, spoke of the Innovations project and associated site wide emissions cap as being outstanding initiatives that are key to keeping the IP Franklin Mill remaining attractive for capital investments that will enable the mill to be competitive in the future global market. He also read a letter from Louise Lucas addressed to the Air pollution control which states that she is in support of the Variance being requested by IP in conjunction with DEQ and EPA.

Jeff Turner, the local riverkeeper for the Blackwater Riverkeeper Organization, cited the cleanup of the Blackwater river bank and debris as good examples of IP's environmental stewardship.

Sean Kerlee, Southeast Regional Director of Pulp and Paperworker's Resource Council (PPRC) spoke about the PPRC's goal of trying to achieve a balance between industry and the environment. He spoke in favor of the Innovations project and requested that the innovations project be supported by all.

Mike Phillips – Chief Financial Officer of Local 2-1488 of the Paper, Allied – Industrial, Chemical & Energy Workers International Union. The union had put together a petition of 672 employee signatures in favor of the site wide emissions cap.

Jon Hartley – Director of Planning and Zoning for Isle of Wight County also served on the stakeholders committee raised 3 points: that he was in favor of the Variance; that IP has been a good environmental steward; and the IP' innovations project which includes the plus projects will be environmentally beneficial. He asked that the board approve the request for IP

Danny Byrum – Maintenance Supervisor at mill and 31 year employee spoke about IP's long term commitment to the environment that he has seen by the installation of countless monitoring devices that his department has had to install.

Kent Pope, the Vice Mayor of Franklin, then read excerpts from letters written in favor of the project by the Mayor, James P. Councill, and the City Manager, Rowland L. Taylor.

Richard Franklin, a representative for Congressman Randy Forbes of the 4th Congressional District notified both agency and company that he is in support of this project by way of a letter to the board.

RESPONSE: Support for the proposal is appreciated.

17. **SUBJECT:** General support.

COMMENTER: International Paper

TEXT: A statement of support was submitted during the comment period, signed by 739 employees of International Paper.

RESPONSE: Support for the proposal is appreciated.