



Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: Article 6 (9VAC5-C.) of Part II of 9VAC5 Chapter 80 Secondary action: 9VAC5-50-240, 9VAC5-50-250 and 9VAC5-50-260
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Minor New Source Review (Rev. H05)
Date this document prepared	September 10, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The regulation applies to the construction or reconstruction of new stationary sources or modifications (physical or operational changes) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the net emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a source-wide perspective to determine applicability based upon the net emissions changes due to or directly resulting from the modification (physical or operational change at an existing stationary source). Procedures for making changes to permits are included. There are provisions which allow the use of a general permit. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review.

The primary change being made to the program is to convert from a permit applicability approach for modifications which looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from

new and modified emissions units. Currently, applicability is based on the net emissions increase based on all the source-wide emissions changes due to or directly resultant from the physical or operational change. The proposed program would base permit applicability on the emissions increases from only those emissions units that undergo a physical or operational change in the project.

Secondary changes include: (1) changes to the way that BACT determinations will be made; (2) changes to the way that NSPS affected facilities are exempted; (3) removal of transportable engines from a non-road engine exclusion; (4) resolution of conflicting exemptions for reconstructed emissions units and modified emissions units; (5) exemption of short term testing and remediation projects, and aggregation of emissions units under some other exemptions; (6) changes to the way that replacement emissions units are exempted; (7) changes to certain exemption requirements for portable stationary sources; (8) changes to the way that emission rates are calculated for certain exemptions; (9) resolution of regulatory conflicts concerning open pit incinerators; and (10) requirements for and clarification of other provisions of the minor new source review program.

Changes were made to the proposed regulation to (1) revise the BACT definition; (2) restore the exemption threshold for fuel burning units using natural gas; (3) correct the fine particulate matter (PM_{2.5}) exemption rate threshold for projects; (4) provide for the exemption of small farm incinerators; (5) revise the definitions of construction, major modification, major stationary source, significant, and toxic pollutant; (6) correct the provision for construction in planned incremental phases; (7) simplify the provisions for permit invalidation, (8) revise the definition of emergency; and (10) make various style, numbering and typographical corrections.

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 or board taking the action, and (3) the title of the regulation.

On September 10, 2010, 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, to Standards of Performance for Stationary Sources (Rule 5-4) (9VAC5-40, Article 4), and Permits for New and Modified Stationary Sources (9VAC5-80, Article 6). The regulatory action is to be effective as provided in the Administrative Process Act.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it 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 the regulation is to protect public health, safety and welfare by establishing the procedural and legal basis for the issuance of new source permits for a proposed new stationary source or a project at an existing one that will (i) enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, (ii) to assess the impact of the emissions from the source on air quality, and (iii) provide a state and federally enforceable mechanism to enforce permit program requirements. The proposed amendments are being made to simplify the program requirements and reduce the complexity of the permit program, as well as revise program requirements based on implementation experience.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

1. The program is being changed to convert from a permit applicability approach for modifications which looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from the affected emissions units that make up the project. Currently, applicability is based on the net emissions increase based on all the source-wide emissions changes due to or directly resultant from the physical or operational changes. The proposed program will base permit applicability on only those emissions units that are new or that undergo a physical or operational change at a project. Debottlenecked emissions (collateral emissions increases and decreases from unchanged processes and equipment) and all emissions decreases from affected emissions units will no longer be considered in determining permit applicability.
2. The program is being changed such that Best Available Control Technology (BACT) determinations will be required for all emissions units that are subject to the minor new source review program. The requirement for a BACT determination will be applied to each pollutant emitted by the new source or project in amounts equal to or greater than the exempt emission rate threshold; however, permit terms and conditions may be applied to any pollutant from the affected emissions units as may be necessary to support the BACT determination. Restrictions on the proportion of the potential emissions reductions that may be considered for a BACT cost-benefit analysis will be revised. The current minimum net emissions increase applicability thresholds for individual affected emissions units will also be eliminated.
3. In order to implement the program changes identified in items 1 and 2, the program is being changed to add or modify definitions and other provisions that will facilitate the clear and consistent identification of the emissions units subject to the permit program (i.e., affected units). For a "new stationary source," the affected emissions units will be all emissions units located to an undeveloped site. For a "project" at an existing stationary source, the affected emissions units will be all new or added emissions units and all modified emissions units that make up the project. Other definitions are being added or changed to resolve conflicts in implementation of the program.
4. The program is being changed such that reconstruction of an emissions unit by the replacement of some of its components will no longer be treated differently from the modification of an emissions unit. Such changes will no longer be exempt if the potential to emit is not increased, but instead will only be exempt if the increase in the emissions rate is less than the exempt emission rates for a modified

stationary source, just like any other modified emissions unit. Reconstruction of an emissions unit by replacing the entire emissions unit will continue to be exempt as a “replacement of an emissions unit” as long as the potential to emit does not increase as a result of that replacement. Reconstruction will only exist in the minor new source review program as it pertains to its applicability under the federal new source performance standards in 40 CFR Part 60.

5. The program is being changed such that certain transportable engines will no longer be considered as nonroad engines that are excluded from the definition of a stationary source. Emissions from such engines may now be subject to the provisions of the minor new source review program and subject to emissions control requirements.

6. The exemption for certain sized fuel burning equipment is being changed to expand the exemption to include space heaters, and in ozone nonattainment and maintenance areas, to aggregate similar types of fuel burning equipment that are included in a single project for the purpose of comparison with the exempt size criteria.

7. Exemptions are being allowed for (i) vegetative waste recycling/mulching operations, (ii) open pit incinerators subject to the open burning rule, (iii) certain small incinerators located on farms, and (iv) certain process testing and remediation projects that remain in existence for less than a year.

8. The program is being changed to remove the prohibition against exempting NSPS facilities.

9. Provisions are being added to provide for processing and issuing informational permit applicability determinations.

10. Provisions are being added to incorporate the federal requirements for the new PM_{2.5} air quality standard, and the exempt emission rate proposed for PM_{2.5} is being revised.

11. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program are being restructured to increase clarity.

12. Provisions are being added to allow terms and conditions of permits to be combined.

13. Provisions for permit invalidation are being revised to be consistent with similar provisions in other regulations.

14. Finally, a number of other provisions have been rewritten to increase clarity, including: clarifying when to include fugitive emissions in determining permit applicability, how changes in stack height are subject to permit review requirements, how regulatory changes affect new and previous permit applications, which modifications are subject to public participation requirements, and how to make permit changes to accommodate exempt equipment replacements.

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 advantages to the affected entities will vary widely according to source size and type and the particular options chosen by each source in order to comply with the regulation. The current

regulation poses many challenges to the affected entities in making applicability determinations, particularly for smaller businesses for which the program is mainly intended. Implementation of the current regulation has placed a significant administrative burden upon the affected entities. Under the current regulation, determination of permit applicability cannot be made with any reasonable degree of efficiency, effectiveness or consistency. Interpreting the new regulation is a major time-consuming workload for the affected entities. However, the affected entities will lose the increased flexibility inherent in the more complex regulation.

2. Department: The problems cited above relative to making applicability determinations also place a similar burden upon the Department. The primary benefit as a result of the changes to this regulation will be a reduction in the complexity of the regulation and associated reduction in workload of the permit writers and field inspectors who make compliance determinations. There are no disadvantages to the Department.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC5 Chapter 50, Part II. Emission Standards.			
Article 4, Standards of Performance for Stationary Sources.			
50-250.	Best Available Control Technology (BACT) is defined. Language listing more specific considerations beyond technical, energy, environmental and economic impacts had been removed.	*Restored specific considerations, including the nature and amount of the emissions, emission control efficiencies achieved in the industry for the source type, and cost effectiveness. Both total cost effectiveness and the cost effectiveness of incremental emission reductions between an installed technology and a new technology are now included.	Necessary so that appropriate BACT emissions limits can be determined and implemented in enforceable permit conditions.
9VAC5 Chapter 80, Part II. Permit Procedures.			
Article 6, Permits for New and Modified Stationary Sources.			
80-1105 B 1.	Certain fuel burning equipment is exempt by fuel type and capacity. Units burning only natural gas were exempt at a heat input of less than 30,000,000 Btu/hr.	*Restored original threshold of less than 50,000,000 BTU/hr.	Necessary because the basis in federal regulation for reducing the threshold has been recinded.
80-1105 B 15.	None.	*Added exemption to allow farm poultry and swine incinerators of certain sizes to be exempted under specified conditions.	Necessary to protect waste disposal assets and groundwater in rural areas and to protect the health of remaining farm animal populations from disease.
80-1105	Exemption emission rates	*A typographical error in the exempt	Necessary correction to

D 1.	for projects for certain regulated pollutants are listed.	emission rate for PM _{2.5} is corrected from 5 tons per year to 6 tons per year.	be the same proportion of the particulate matter (PM) standard as the PM _{2.5} standard for new sources is (40%).
80-1105 E 2.	Exemptions for certain facilities, including incinerators other than certain open pit incinerators, are prohibited.	*Revised to allow farm poultry and swine incinerators of certain sizes to be exempted under specified conditions.	Necessary to protect waste disposal assets and groundwater in rural areas and to protect the health of remaining farm animal populations from disease.
80-1110 C.	Definition of "emergency." Generally describes the situations in which certain emergency equipment may be exempt under 9VAC5-80-1105 B 2.	*Revised to more specifically describe emergency situations consistent with uses beyond permit exemptions.	Necessary to be consistent with state statutory requirements for a general permit.
80-1110 C.	None.	Adds definition of "Independent system operator" or "ISO".	Necessary to support revised definition of "emergency."
80-1110 C.	Definition of "major modification." Describes criteria for determining if a project qualifies as a major modification under the minor new source review (NSR) program.	*Adds language to allow future permit conditions to be considered in determining if a modification is major under the minor NSR program.	Necessary so that the permit processing status of sources can be determined based upon criteria relevant to the permit application.
80-1110 C.	Definition of "major stationary source." Describes criteria for determining if a new source qualifies as a major stationary source under the minor new source review (NSR) program.	*Adds language to allow future permit conditions to be considered in determining if a proposed new source is major under the minor NSR program.	Necessary so that the permit processing status of sources can be determined based upon criteria relevant to the permit application.
80-1110 C.	Definition of "significant." Describes emissions levels that affects whether a change is classified as a "major modification."	* Effectively restores the current significance level for VOC to 40 tpy outside of serious or severe nonattainment areas. Adds significance levels for serious or severe nonattainment areas.	Necessary to be consistent with current requirements for "major modification" in the minor NSR program for sources located within a PSD or nonattainment area, without referring to the other NSR programs.
80-1110 C.	Definition of "synthetic minor." Describes the criteria for making a major source minor.	Revised to generalize language pertaining to how potential to emit is limited.	Necessary to avoid confusion over what limits are appropriate for limiting potential to emit.
80-1110 C.	Definition of "toxic pollutant." Describes the criteria for identifying pollutants that present a public health risk.	Corrects the reference for including pollutants that are incorporated by reference.	Necessary to properly identify the intended pollutants.
80-1120	Provides for programs of	Revises the criteria for adding	Necessary to be

G.	construction in planned incremental phases.	together emission increases to reflect the shift from net emissions to uncontrolled emissions increase.	consistent with other program changes.
80-1210 B.	Describes criteria under which delays in construction make a permit invalid.	*Removes some qualifications of the invalid permit criteria.	Necessary to be consistent with permit invalidation criteria in the major NSR programs.
80-1250 A 4	Lists the requirements by reference for issuing general permits.	Corrects the reference to the Administrative Process Act pertaining to general permits.	Necessary to provide the correct reference for issuing general permits.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

A summary and analysis of the public testimony, along with the basis for the decision of the Board, begins on page 28.

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 Chapter 50, Part II. Emission Standards.			
Article 4, Standards of Performance for Stationary Sources.			
50-240, Applicability and designation of affected facility.	N/A.	See below.	See below.
50-240 A.	N/A.	Affected facilities are all those facilities that emit any air pollutant.	Affected facilities are those emissions units that are subject to new source review. Changed to be consistent with proposed changes to the minor NSR permit program.
50-240 C.	N/A.	Affected facilities are those emissions units that are subject to new source review.	Standards are applied to any regulated air pollutant except to the extent that the pollutant is regulated by the Hazardous Air Pollutant (HAP) regulations in Chapter 60. Inserted to be consistent with proposed changes to the minor NSR permit program.
50-250, Definitions.	N/A.	See below.	See below.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
50-250 A.	N/A.	Applicability of terms as defined in subsection C (Terms defined).	Language updated to be consistent with other articles in Chapters 40 and 50. Changed to improve consistency with related chapters.
50-250 B.	N/A.	Terms not defined in subsection C have meanings as assigned in Chapter 10.	Specifies that terms not defined in subsection C have meanings as assigned in a hierarchy of sources; in Chapter 80, in Chapter 10 or according to common use, in that order. Changed to avoid confusion about which chapters preferentially assign meaning to undefined terms used in Chapter 50.
50-250 C. Terms defined.	N/A.	See below.	See below.
"Best Available Control Technology."	N/A.	Term is defined as an emissions limitation for the purpose of choosing appropriate permit process limitations, control technologies, work practices, operational standards. Specifies certain factors to be considered. Currently the definition serves both the major NSR program and minor NSR program.	Revises language that specifies that consideration be given to the nature and amount of new emissions, emission control efficiencies achieved in the industry for the source type and cost effectiveness of the incremental emission reduction achieved, to delete the requirement that only new emissions be considered and allow total cost effectiveness to be considered also. Necessary to limit the definition to the minor NSR program, reduce confusion, and bring the definition in line with other changes being made to BACT applicability.
"Lowest achievable emission rate."	N/A.	Term is defined for the purposes of setting standards for Nonattainment Major Source NSR.	Deletes the definition because the term is now defined in the major NSR program.
"New source review (NSR) program."	N/A.	Term is defined as the preconstruction review and permit program required by the Clean Air Act and codified in Chapter 80.	Deletes the definition because the term is now defined in Part I of Chapter 80.
50-260, Standards for stationary sources.	N/A.	See below.	See below.
50-260 B.	N/A.	Specifies how BACT is applied to each pollutant at a new stationary source.	Specifies that terms and conditions may be placed in the permit for any pollutant emitted by the affected emissions units as may be

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			necessary to implement the BACT determination. Necessary to be consistent with other changes being made to BACT applicability, using language consistent with the new terms defined in Chapter 80.
50-260 C.	N/A.	Specifies how BACT is applied to each pollutant at a modified stationary source and each emissions unit.	Deletes the requirement to apply BACT only to individual emissions units. Specifies that terms and conditions may be placed in the permit for any pollutant as may be necessary to implement the BACT determination. Necessary to be consistent with other changes being made to BACT applicability, using language consistent with the new terms defined in Chapter 80.
50-260 D.	N/A.	BACT at phased construction projects must be reviewed prior to commencement of each phase and adequacy of the BACT determination for the project must be demonstrated.	Specifies that the adequacy of a BACT determination for phased construction must also be reviewed and demonstrated prior to each phase for new sources. Necessary to be consistent with the new terms defined in Chapter 80.
9VAC5 Chapter 80, Part II. Permit Procedures.			
Article 6, Permits for New and Modified Stationary Sources.			
80-1100, Applicability.	N/A.	See below.	See below.
80-1100 A.	N/A.	Specifies how the provisions of Article 6 are applied.	Specifies that provisions apply to construction of a new stationary source or any project at a stationary source, and apply to reduction of stack outlet elevations. Changed to be consistent with new defined terms and to clarify that the minor NSR program applies to changes to stack heights.
80-1100 C.	N/A.	Specifies that provisions of Article 6 do not apply to exempt sources, facilities or emissions units.	Allows the owner of the exempt source, facility or emissions unit the option to get a minor NSR permit. Necessary to make it possible for new sources and projects consisting of many exempt emissions units to get a minor NSR permit to avoid major NSR.
None.	80-1100 C 3.	None.	Specifies that owners of a new stationary source or project that opt into the minor NSR program are then subject to the program as if

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			the exemptions did not apply. Added to specify how the program provisions apply to such facilities that opt in.
80-1100 D.	N/A.	Specifies how fugitive emissions are to be included in making permit applicability determinations.	Specifies that fugitive emissions are to be included in making permit applicability determinations except when fugitive emissions are specifically excluded under the exemption provisions. Necessary to avoid confusion about the meaning of this provision.
80-1100 E.	N/A.	Specifies when sources that are subject to a federal new source performance standard (NSPS) may be exempt.	Deletes this provision because the federal NSPS program has progressively covered smaller sources, for which minor NSR review is not a cost efficient use of limited staff resources.
(See above.)	80-1100 E.	(See above.)	Specifies that a series of exempt changes accomplished within a prior five-year contemporaneous period must be considered together for permit applicability. Necessary to make the look-back interval for a series of exempt changes consistent with other changes being made to program applicability.
80-1100 H.	N/A.	Specifies how certain terms used in this Article relate to other terms in the Article.	Revises this provision to remove the term "reconstruction." Changed to be consistent with other changes made to remove "reconstruction" as an action that is subject to this article (as separate from other modifications).
N/A.	80-1100 I.	None.	Identifies how the elements of the federal HAP new source review programs are to be implemented under this article. Relocated from 80-1120 H and elaborated upon to specify which parts of the federal HAPS programs are implemented under the minor NSR program.
N/A.	80-1100 J.	None.	Specifies how the minor NSR program provisions prior to this revision are to be applied after the revision. Added to clarify how the proposed revisions will be implemented.
N/A.	80-1100 K.	None.	Specifies which provisions of 40 CFR Parts 60, 61 and 63 cited in

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			this article apply. Added to avoid confusion about which parts of federal programs are implemented under this article.
N/A.	80-1100 L.	None.	Specifies which provisions of 40 CFR Parts 51, 58, 60, 61 and 63 cited in this article apply. Added to avoid confusion about which parts of federal programs are implemented under this article.
N/A.	80-1100 M.	None.	Specifies how condensable and non-condensable PM _{2.5} emissions will be treated under this Article. Added to be consistent with federal new source review requirements for PM _{2.5} .
N/A.	80-1105, Permit exemptions.	Specifies criteria for stationary sources, facilities or emissions units that may be exempt from minor new source review.	Replaces 80-1320 and makes changes throughout this section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary to be consistent with the placement of exemptions in other articles, necessary for clarity and necessary to be consistent with other changes.
N/A.	80-1105 A.	Specifies general requirements for exemptions from minor NSR permit requirements.	Moves 80-1320 A general exemption requirements to a new location, adds a new exemption for some vegetation mulching operations, clarifies the portable emissions unit exemption, replaces the exemption for reconstructed emissions units with an exemption for replacement emissions units, and adds an exemption for changes in stack height elevations emitting pollutants from an exempt emissions unit. Necessary to be consistent with the placement of exemptions in other articles and to add or clarify exemptions that have either a net beneficial impact on the environment or an insignificant adverse impact on emissions.
N/A.	80-1105 B.	Specifies exemptions for specific types of facilities that may be exempt from minor NSR permit requirements.	Moves 80-1320 B specific source type exemptions to a new location; clarifies the exemption for emergency engines; adds exemptions for space heaters, small swine and poultry

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>incinerators on farms, certain open pit incinerators, and temporary test and remediation facilities; and requires that certain changes in sensitive areas be aggregated to qualify for the exemption. Necessary to be consistent with the placement of exemptions in other articles, and to add, clarify, or modify exemptions that have either a net beneficial impact on the environment or an insignificant adverse impact on emissions.</p>
N/A.	80-1105 C.	Specifies conditions under which new stationary sources may be exempt from minor NSR permit requirements.	<p>Moves 80-1320 C new stationary source exemption criteria to a new location, changes the basis for the exemption from potential-to-emit to uncontrolled emission rate, adds exemption criteria for PM_{2.5}, and incorporates and clarifies 80-1100 D provisions for fugitive emissions. Transferred to be consistent with placement of exemptions in other articles and change the basis for the exemption consistent with the other changes being made to program applicability.</p>
N/A.	80-1105 D.	Specifies conditions under which modification or reconstruction of existing stationary sources may be exempt from minor NSR permit requirements.	<p>Moves 80-1320 D existing stationary source exemption criteria to a new location, changes the basis for the exemption from net emissions increase to an increase in the uncontrolled emission rate from a project, adds exemption criteria for PM_{2.5}, and incorporates and clarifies 80-1100 D provisions for fugitive emissions. Transferred to be consistent with placement of exemptions in other articles and amended to change the basis for the exemption consistent with the other changes being made to program applicability.</p>
N/A.	80-1105 E.	Specifies conditions under which toxic emissions from new sources and projects may be exempt from minor NSR permit requirements.	<p>Moves 80-1320 E toxic emissions exemption criteria, allows exemptions for small swine and poultry incinerators on farms, and adds an exemption for open pit burners that are also regulated by Chapter 40, Article 40. Transferred to be consistent with</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			placement of exemptions in other articles and amended to clarify an apparent inconsistency with other regulations.
N/A.	80-1105 F.	Specifies conditions under which new sources and projects that are subject to federal hazardous air pollutant programs may be exempt from minor NSR permit.	Moves 80-1320 F federal hazardous air pollutant exemption criteria and clarifies which sources subject to which federal programs may be exempt. Transferred to be consistent with placement of exemptions in other articles and to clarify that the exemption applies to sources for which EPA has made a formal determination.
80-1110, Definitions.	N/A.	Specifies how meaning is determined for terms used in this article.	Changed throughout this section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary for clarity and to be consistent with other changes.
80-1110 C, Terms defined.	N/A.	Specifies definitions for certain terms used in this article.	See below.
80-1110 C, Terms defined. "Addition."	N/A.	None.	Identifies certain types of emissions units that are new to the stationary source. Needed to correctly group similar types of changes at a stationary source for the purpose of applying permit requirements.
80-1110 C, Terms defined. "Affected emissions units."	N/A.	None.	Identifies the types of emissions units that may be subject to minor NSR permit requirements. Necessary to facilitate the clear and consistent identification of the emissions units subject to the permit program by differentiating between those emissions units that may be, and those that may not be, subject to minor NSR permit requirements.
80-1110 C, Terms defined. "Allowable emissions."	N/A.	Identifies the maximum emission rate allowable at a source.	Deletes a previously defined term. Necessary because term is no longer used in the regulation.
80-1110 C, Terms defined. "Applicable federal requirement."	N/A.	Identifies federal requirements applicable to sources.	Updates definition. Necessary to reflect changes to federal regulations.
80-1110 C, Terms	N/A.	None.	Adds a term and identifies

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
defined. "Clean wood."			characteristics of a certain process material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
80-1110 C, Terms defined. "Commence."	N/A.	Characterizes the start of activities that may be subject to minor NSR permit requirements.	Applies new emissions unit groupings for compliance purposes. Necessary to be consistent with other proposed changes.
80-1110 C, Terms defined. "Construction."	N/A.	Identifies activities at a source that may be subject to minor NSR permit requirements.	Broadens definition to apply to all types of changes at a source that may be subject to minor NSR requirements. Necessary to be consistent with other proposed changes.
80-1110 C, Terms defined. "Construction waste."	N/A.	None.	Identifies characteristics of a certain process material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
80-1110 C, Terms defined. "Debris waste."	N/A.	None.	Identifies characteristics of a certain process material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
80-1110 C, Terms defined. "Demolition waste."	N/A.	None.	Identifies characteristics of a certain process material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
80-1110 C, Terms defined. "Diesel engine."	N/A.	None.	Identifies characteristics of a certain type of emissions unit. Necessary to characterize a limited use for the new exemption for some vegetation mulching operations.
80-1110 C, Terms defined. "Emergency."	N/A.	Generally describes the situations in which certain emergency equipment may be exempt under 9VAC5-80-1105 B 2.	Revised to more specifically describe emergency situations consistent with uses beyond permit exemptions. Necessary to be consistent with state statutory requirements for a general permit.
80-1110 C, Terms defined. "Emissions limitation."	N/A.	None.	Defines a general term for many ways that emissions may be limited. Necessary to clarify when an

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			emissions limit is required and when other limitations on emissions may be allowed.
80-1110 C, Terms defined. "Existing stationary source."	N/A.	None.	Defines a class of stationary sources. Necessary to differentiate between types of changes at a site for which minor NSR permitting may be required.
80-1110 C, Terms defined. "Federal hazardous air pollutant new source review program."	N/A.	Identifies the elements of the federal hazardous air pollutant program.	Deletes some provisions because they are duplicated in 80-1100 I. Updates other provisions to reflect recent changes in the equivalent definition in the major NSR program. Necessary to improve consistency within the NSR programs.
80-1110 C, Terms defined. "Federal operating permit."	N/A.	None.	Adds definition for the purpose of specifying certain properties of applicable federal requirements under the minor NSR program.
80-1110 C, Terms defined. "Federal operating permit program."	N/A.	None.	Adds definition for the purpose of specifying certain properties of applicable federal requirements under the minor NSR program.
80-1110 C, Terms defined. "Hazardous air pollutant."	N/A.	Identifies air pollutants subject to the federal hazardous air pollutant program.	Updates definition. Necessary to be consistent with federal regulations.
80-1110 C, Terms defined. "Independent System Operator" or "ISO."	N/A.	None.	Adds definition. Necessary to support revised definition of "emergency."
80-1110 C, Terms defined. "Major modification."	N/A.	Defines major changes to a source in terms of the major NSR programs.	Specifies a definition for major changes to a source in terms that are defined within the minor NSR program and adds criteria for limiting potential-to-emit. Necessary to clarify which sources are affected and which changes are subject to additional minor NSR permit program requirements, and necessary so that the permit processing status of sources can be determined based upon criteria relevant to the permit application.
80-1110 C, Terms defined. "Major new source review (NSR) permit."	N/A.	None.	Defines a class of NSR permit by its originating program. Necessary to specify a hierarchy of program requirements and their properties.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
80-1110 C, Terms defined. "Major stationary source."	N/A.	Specifies the criteria for classifying a source as "major" under the minor NSR program.	Adds criteria for limiting the potential-to-emit for new stationary sources. Necessary for consistency with the definition of major modification and so that the permit processing status of sources can be determined based upon criteria relevant to the permit application.
80-1110 C, Terms defined. "Minor new source review (NSR) permit."	N/A.	None.	Defines a class of NSR permit by its originating program. Necessary to specify a hierarchy of program requirements and their properties.
80-1110 C, Terms defined. "Minor new source review (minor NSR) program."	N/A.	Specifies the basis and scope of the minor source pre-construction review program.	Clarifies that the minor source pre-construction review program applies pollutant by pollutant and clarifies how the program may be implemented for those pollutants. Necessary to be consistent with other proposed changes.
80-1110 C, Terms defined. "Modification."	N/A.	Defines changes to a stationary source that may be subject to minor NSR permit requirements.	Changes the basis for such changes, adds two exceptions to the definition and clarifies how the exceptions are limited by permit conditions. Necessary to be more consistent with similar language in the major NSR program.
80-1110 C, Terms defined. "Modified source."	N/A.	Specifies a start date for defining a source modification.	Deleted because the term is not used in the remainder of this article.
80-1110 C, Terms defined. "Necessary preconstruction approvals or permits."	N/A.	Specifies that such required approvals are consistent with the state implementation plan (SIP).	Clarifies that the required approvals are implemented through one of the SIP-approved NSR programs. Necessary to clarify permit requirements.
80-1110 C, Terms defined. "Net emissions increase."	N/A.	Specifies how the "net emissions increase" basis for minor NSR permit applicability is calculated.	Deletes a term no longer used in this article.
80-1110 C, Terms defined. "New source."	N/A.	Specifies a start date for defining a new source.	Deletes a term that is no longer used in this article except where it is used to refer to federally required programs and standards.
80-1110 C, Terms defined. "New source review (NSR) permit."	N/A.	None.	Defines a general class of new source review permits. Necessary for differentiating pre-construction review permit programs from state and federal

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			operating permit programs.
80-1110 C, Terms defined. "New source review (NSR) program."	N/A.	Specifies the basis and scope for the general class of pre-construction review programs.	Clarifies that the pre-construction review programs apply pollutant by pollutant and how the programs may be implemented for those pollutants. Necessary to be consistent with other proposed changes.
80-1110 C, Terms defined. "New stationary source."	N/A.	None.	Defines a class of stationary sources. Necessary to facilitate the clear and consistent identification of the emissions units subject to the permit program.
80-1110 C, Terms defined. "Nonroad engine."	N/A.	Defines a class of mobile engines that are not motor vehicles and are not engines used as "stationary sources."	Removes all portable engines that are used as stationary sources from the definition. Necessary to remove the conflicts with the exemption for portable emissions units.
80-1110 C, Terms defined. "Plantwide applicability limitation (PAL)."	N/A.	None.	Defines a specific type of emission limitation used to limit sourcewide emissions. Added so that term may be used within the article.
80-1110 C, Terms defined. "PAL permit."	N/A.	None.	Defines a subclass of state operating permits. Added to specify that PALs are implemented through the state operating permit program and not through the minor NSR program.
80-1110 C, Terms defined. "Precursor pollutant."	N/A.	None.	Specifies pollutants that are precursors to certain pollutants for which an ambient air quality standard exists. Necessary for applying federal standards for a new regulated pollutant.
80-1110 C, Terms defined. "Process operation."	N/A.	None.	Defines the context in which emissions units may operate. Necessary to properly qualify the criteria for an exempt replacement of an emissions unit.
80-1110 C, Terms defined. "Project."	N/A.	None.	Specifies the types of changes at an existing stationary source that may be subject to permit requirements. Necessary to facilitate the clear and consistent identification of the emissions units subject to the permit program.
80-1110 C, Terms	N/A.	Specifies the criteria for	Revises definition to apply only to

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
defined. "Reconstruction."		considering changes to an emissions unit as reconstruction.	enforcement of changes previously permitted or exempted as "reconstruction." Necessary to resolve an exemption issue and to be consistent with other changes.
80-1110 C, Terms defined. "Regulated air pollutant."	N/A.	Specifies the pollutants that may be subject to minor NSR permit requirements.	Revises the pollutant list to include precursor pollutants. Necessary to regulate the precursor pollutants for PM _{2.5} using the minor NSR program.
80-1110 C, Terms defined. "Replacement."	N/A.	None.	Defines a term that was formerly used but was undefined. Necessary to continue to exempt replacement emissions units that do not adversely impact emissions.
80-1110 C, Terms defined. "Secondary emissions."	N/A.	Specifies that secondary emissions are emissions from stationary sources that result from changes, but are not emitted from the stationary source itself.	Revises the term to specify that secondary emissions result only from construction of a new stationary source. Necessary to remove emissions resulting from construction at an existing source from the exclusion for secondary emissions.
80-1110 C, Terms defined. "Significant."	N/A.	None.	Specifies that any potential emissions rate increases at or above specified thresholds for the listed pollutants will be considered to be significant. Necessary to differentiate major modifications from other modifications in the minor NSR program.
80-1110 C, Terms defined. "Significant emissions increase."	N/A.	None.	Defines an emissions rate increase that is significant for any pollutant. Necessary to differentiate major modifications from other modifications in the minor NSR program.
80-1110 C, Terms defined. "Site."	N/A.	None.	Defines a location that may contain no operating emissions units." Necessary for differentiating a new stationary source from an existing stationary source.
80-1110 C, Terms defined. "Source category schedule for standards."	N/A.	None.	Identifies the currently adopted schedule for promulgating MACT standards. Necessary to accommodate the more specific applicability review requirements described in 80-1105 F.
80-1110 C, Terms	N/A.	None.	Identifies a type of direct heater

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
defined. "Space heater."			used to maintain a space as habitable or useable. Necessary for extending the fuel-burning equipment exemption to these heaters.
80-1110 C, Terms defined. "State operating permit."	N/A.	None.	Defines a type of operating permit. Necessary for describing the ways that state operating permit program interact with the minor NSR program.
80-1110 C, Terms defined. "Stationary source."	N/A.	Incorporates SIC manual, with supplement, to identify regulated entities covered by regulation.	Deletes the reference to the SIC manual supplement because it no longer exists.
80-1110 C, Terms defined. "Synthetic minor source."	N/A.	Specifies the criteria for considering a potential major source to be a minor source for the purposes of the NSR programs.	Clarifies the criteria and specifies that the criteria apply pollutant by pollutant. Necessary to avoid confusion about the criteria for making a synthetic minor source.
80-1110 C, Terms defined. "Temporary facility."	N/A.	None.	Specifies certain characteristics for a type of temporary new source or project that does not contribute product or service. Necessary for preventing construction a stationary source without a permit under the guise of constructing a temporary facility that may otherwise be exempt.
80-1110 C, Terms defined. "Toxic pollutant."	N/A.	None.	Defines criteria for pollutants that may pose a health hazard and may be regulated under the minor NSR program. Necessary to reduce confusion concerning which hazardous pollutants may be addressed under the minor NSR program.
80-1110 C, Terms defined. "Undeveloped site."	N/A.	None.	Specifies characteristics of a location at which a new source is constructed. Necessary to differentiate a new stationary source from an existing stationary source.
80-1110 C, Terms defined. "Vegetative waste recycling/mulching operation."	N/A.	None.	Specifies characteristics of a certain type of organic material recycling process and limits the types feed material to be used. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
80-1110 C, Terms	N/A.	None.	Specifies the characteristics of a

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
defined. "Vegetative waste."			certain process feed material. Necessary to characterize a limited process for the new exemption for some vegetation mulching operations.
80-1120, General.	N/A.	Specifies general requirements concerning permits issued under this article.	Changes made throughout this section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary for clarity and to be consistent with other changes.
80-1120 A.	N/A.	Prohibits construction of any new source or any changes to any existing stationary source that would be subject to minor NSR without first obtaining a proper permit.	Revises provision to also prohibit operation of such new stationary source or project at an existing stationary source without first obtaining the required permit. Also prohibits constructing or operating such stationary source except as specified in the permit. Necessary to facilitate the clear and consistent identification of the emissions units that are subject to the permit program.
80-1120 C.	N/A.	Prohibits the lowering of the outlet elevation of an emission point without first obtaining a proper permit.	Makes changes to allow such outlet elevation reductions without a permit if the reduction qualifies as exempt from permitting requirements. Necessary to prevent unnecessary applications and to preserve staff resources.
80-1120 D.	N/A.	Allows the board to combine permit requirements into one permit and require applications for multiple emissions units to be combined into one application.	Requires the board to combine permit terms into one permit if certain conditions are met and prevents making changes to those terms unless appropriate requirements are met. Necessary to clarify the requirements for combining permits. Deletes the requirement to combine applications because changes to 80-1140 A make the requirement redundant.
80-1120 E.	N/A.	Allows the board to combine terms from a state operating permit (SOP) with those of a minor NSR permit and supersede the SOP under certain conditions.	Deletes this entire provision. Necessary because the requirements are incorporated into 80-1120 D and 80-1255.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
N/A.	80-1120 E.	(see above.)	Adds a provision to allow the board to make changes to permit terms under certain conditions. Changed permit terms may still be combined. Necessary to clarify the requirements for making changes to permit terms.
80-1120 G.	N/A.	Allows permits to be issued for a project to be completed in planned incremental phases.	Makes changes to support the change in the permit applicability approach. Necessary for consistency with other changes.
80-1120 H.	N/A.	Identifies how the elements of the federal hazardous air pollutant new source review program are to be implemented under this article.	Deletes entire section. Necessary because provisions are relocated to 80-1100 I for clarity.
80-1140, Applications.	N/A.	Specifies permit application requirements.	Makes changes throughout this section to use new terms defined in section 80-1110. Necessary for consistency with other changes.
80-1140 A.	N/A.	Requires a single application identifying each emissions unit subject to minor NSR.	Provides that one application is required identifying each emission unit at the new source or project. Necessary for clarification of application requirements.
80-1140 B.	N/A.	Requires a separate application for each stationary source.	Requires separate application for each new source or project. Necessary for clarification of application requirements.
80-1140C.	N/A.	Requires a single application for phased development projects.	Provides a requirement for a single application covering new sources with phased development. Necessary for clarification of application requirements.
80-1140 E.	N/A.	Requires certification of understanding that minor NSR application does not provide shield from applicability of major NSR program.	Revises provisions for clarity using new terms. Necessary for consistency with other changes.
80-1150, Application information required.	N/A.	Requires the board to provide application forms and provides that completed forms also serve as initial registration.	Makes changes throughout this section to use new terms defined in section 80-1110. Necessary for clarity and to be consistent with other changes.
80-1150 B.	N/A.	Specifies the minimum information requirements	Revises provisions for clarity using new terms. Also makes changes to

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		that each application must contain	support the changes in the permit applicability approach. Necessary for consistency with other changes.
80-1160, Action on permit application.	N/A.	Specifies application processing steps and deadlines.	Makes changes throughout this section to use new terms defined in section 80-1110 and to make reference corrections. Necessary to be consistent with other changes.
80-1160 A.	N/A.	This provision specifies the criteria for determining an application to be complete.	Renumbers this provision as 80-1160 B and updates the provision to reflect the addition of fee requirements to the new source review permit programs. Necessary for consistency with other program requirements.
N/A.	80-1160 A.	None.	Inserts a new provision allowing for processing a non-binding applicability determination. Necessary to provide sources with assurance of their compliance with permit requirements.
80-1170, Public participation.	N/A.	Specifies public participation requirements for permit applications.	Makes changes throughout this section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary to be consistent with other changes.
80-1170 A.	N/A.	Specifies the applicant's public notification requirements for major stationary sources.	Revises provision to specifically require public notification of new major stationary sources. Necessary for clarity and to be consistent with other changes.
80-1170 D.	N/A.	Specifies the types of sources and permit actions that have public participation requirements.	Inserts a new provision at subdivision D.3 to require public participation for projects that are equivalent in emissions to a new major stationary source. Necessary to allow public input on applications for emissions changes at minor sources that would make the source potentially qualify as a major source.
80-1170 E.	N/A.	Specifies the public participation information and publication requirements.	Revises language to include in subdivision E 1 the requirement that was moved from subdivision D 4 to publish certain information. Necessary to clarify the information that is required to be published.
80-1180,	N/A.	Specifies requirements	Makes changes throughout this

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Standards and conditions for granting permits.		that must be met before approving a permit application.	section to use new terms defined in section 80-1110 and to make grammatical and reference corrections. Necessary to be consistent with other changes.
80-1180 B.	N/A.	Specifies criteria for including emission caps as permit terms.	Revises criteria to specify that emission caps may be used to create a synthetic minor source. Necessary to clarify how such sources are created.
80-1180 C.	N/A.	Specifies criteria for establishing emission standards as permit terms.	Corrects criteria to be consistent with defined terms. Necessary to be consistent with other changes.
80-1180 D.	N/A.	Specifies other elements that may be included as permit terms.	Makes grammatical corrections and other corrections to be consistent with similar terms used elsewhere in regulations. Necessary to clarify potential permit terms.
80-1190, Application review and analysis.	N/A.	Specifies review requirements for permit applications.	Makes changes throughout this section to use new terms defined in section 80-1110 and to make reference corrections. Necessary to be consistent with other changes.
80-1200, Compliance determination and verification by performance testing.	N/A.	Specifies compliance and testing requirements.	Makes changes throughout this section to use new terms defined in section 80-1110. Necessary to be consistent with other changes.
80-1210, Permit invalidation, suspension, revocation and enforcement.	N/A.	Specifies actions that may be taken in response to non-compliance with the permit application, permit terms and conditions, or failure to construct within a specified period of time.	Makes changes throughout this section to use new terms defined in section 80-1110 and to renumber the requirements. Necessary to be consistent with other changes.
N/A.	80-1210 A.	None.	Inserted to allow and facilitate enforcement action against noncompliant new or modified sources that are not subject to NSR program permit requirements. Necessary for enforcement continuity.
80-1210 A.	80-1210 B.	Describes criteria under which delays in construction make a permit invalid.	Removes some qualifications of the invalid permit criteria. Necessary to be consistent with permit invalidation criteria in the

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
80-1220, Existence of permit no defense.	N/A.	Specifies that having a permit does not provide a defense against violations of these regulations or any requirements of other government entities.	major NSR programs. Makes a change to use a new term defined in section 80-1110. Necessary to be consistent with other changes.
80-1240, Transfer of permits.	N/A.	Specifies that permits may not be transferred among locations or to different sources or emissions units, except as specified.	Makes changes to use a new term defined in section 80-1110 and to correct grammar. Necessary to be consistent with other changes.
N/A.	80-1240 E.	None.	Adds a provision to facilitate the replacement of certain permitted emissions units that would be exempt under section 80-1105. Necessary to resolve inconsistency between regulatory provisions.
80-1250, General permits.	N/A.	Specifies the requirements such that a source may be covered by a general permit.	Makes changes to use a new term defined in section 80-1110 and to correct grammar and references. Necessary to be consistent with other changes.
	80-1255, Actions to combine permit terms and conditions.	None.	Specifies requirements for combining permit terms and provisions of two or more permits into one permit and for removing similar or duplicated terms. Necessary to regain the capability to combine permits.
80-1260, Actions to change permits.	N/A.	Specifies how changes may be made to permits and to permit terms in the permit.	Makes changes throughout this section to use new terms defined in section 80-1110, to correct grammar, and to make the specific change described below. Necessary to be consistent with other changes.
80-1260 A.	N/A.	Specifies general requirements for making changes to permits.	Adds language clarifying that any changes to minor NSR permit terms to be incorporated into federal operating permits are not made according to this section. Necessary to avoid confusion concerning which requirements apply to these changes.
80-1270, Administrative permit amendments.	N/A.	Specifies permit changes that may be made by administrative amendment and how those changes are made.	Makes changes in this section to correct grammar and to delete language for combining permits in subdivision A 4. Necessary to avoid conflict with

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			new subsection 80-1255 E for combining permits.
80-1280, Minor permit amendments.	N/A.	Specifies permit changes that may be made by minor amendment and how those changes are made.	Makes changes throughout this section to use new terms defined in section 80-1110, to clarify language, to correct grammar, and to make the specific changes described below. Necessary to clarify requirements and be consistent with other changes.
80-1280 A.	N/A.	Specifies the criteria that all must be satisfied for making a permit change as a minor amendment.	Adds language to clarify that any changes made to lower an emissions cap is not one of the disqualifying criteria for a minor amendment. Necessary to facilitate minor permit changes that do not otherwise affect actual emissions.
80-1280 B.	N/A.	Specifies certain changes that may be made as a minor amendment.	Adds language allowing minor amendments to be used to transfer permit requirements from an emissions unit to its exempt replacement. Necessary to allow this exemption that does not otherwise affect actual emissions.
80-1280 C.	N/A.	Specifies that certain changes involving rescission of an underlying requirement may be made as a minor amendment.	Adds two criteria that must be met in order to rescind a permit requirement by minor amendment. Necessary for continuity of the minor NSR permit program.
80-1280 D.	N/A.	Specifies the application requirements for a minor amendment of a permit.	Adds language allowing the applicant to propose a revised permit condition. Necessary to allow the applicant to make the minor amendment change immediately.
80-1280 G.	N/A.	Specifies the procedures for an owner to follow to make the proposed minor amendment change immediately.	Adds language allowing the applicant to comply with the proposed permit condition. Necessary to allow the applicant to make the minor amendment change immediately.
80-1290, Significant amendment procedures.	N/A.	Specifies permit changes that must be made by significant amendment and how those changes are made.	Makes changes throughout this section to use new terms defined in section 80-1110, to clarify language, to correct grammar, and to make the specific changes described below. Necessary to clarify requirements

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			and be consistent with other changes.
80-1290 A.	N/A.	Specifies the criteria that must be satisfied for making a permit change as a significant amendment.	Adds language specifying how the significant amendment is not to be used. Necessary to avoid confusion concerning which public participation requirements apply.
80-1290 C.	N/A.	Specifies the public participation requirements for a significant amendment.	Makes the public participation requirements subject to whether or not the changed emissions unit was previously subject to public participation and subject to the discretion of the board as to whether they are necessary. Necessary to avoid confusion concerning when public participation requirements apply.
80-1300, Reopening for cause.	N/A.	Specifies criteria and procedures for reopening a permit.	Makes changes throughout this section to use new terms defined in section 80-1110. Necessary to be consistent with other changes.
80-1300 A.	N/A.	Sets forth the requirements for reopening and amending a permit.	Provisions are being changed (amending to revising) to avoid confusion with amendment process set forth elsewhere in regulation.
80-1320, Permit exemption levels.	N/A.	Specifies criteria for stationary sources, facilities or emissions units that may be exempt from minor new source review.	Repealed. Necessary because exemption provisions were incorporated into new section 80-1105.

Regulatory flexibility analysis

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.

Although the regulations apply to all facilities of the applicable source type, these standards were specifically designed to apply to facilities of the size that are now defined as small businesses. As such, any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely impact the benefits that would be achieved through the implementation of the existing regulations.

Family impact

Please assess 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; and 4) increase or decrease disposable family income.

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

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REG\DEV\H05-10TF

COMMONWEALTH OF VIRGINIA

STATE AIR POLLUTION CONTROL BOARD

SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR

REGULATION REVISION H05

CONCERNING

MINOR NEW SOURCE REVIEW

(9VAC5 CHAPTER 80)

INTRODUCTION

At the December 2009 meeting, the board authorized the department to promulgate for public comment a proposed regulation revision concerning minor new source review (NSR).

A public hearing was advertised accordingly and held in Richmond on April 14, 2010 and the public comment period closed on May 3, 2010. The proposed regulation amendments subject to the hearing are summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering minor new source review. A summary of the amendments follows:

1. The program is being changed to convert from a permit applicability approach for modifications which looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from the affected emissions units that make up the project. Currently applicability is based on the net emissions increase based on all the source-wide emissions changes due to or directly resultant from the physical or operational changes. The proposed program will base permit applicability on the emissions from only those emissions units that are new or that undergo a physical or operational change at a project. Debottlenecked emissions (collateral emissions increases and decreases from unchanged processes and equipment) and all emissions decreases from affected emissions units will no longer be considered in determining permit applicability.

2. The program is being changed such that Best Available Control Technology (BACT) determinations will be required for all emissions units that are subject to the minor new source review program. The requirement for a BACT determination will be applied to each pollutant emitted by the new source or project in amounts equal to or greater than the exempt emission rate threshold; however, permit terms and conditions may be applied to any pollutant from the affected emissions units as may be necessary to support the BACT determination. Restrictions on the proportion of the potential emissions reductions that may be considered for a BACT cost-benefit analysis will be removed. The current minimum net emissions increase applicability thresholds for individual affected emissions units will also be eliminated.
3. In order to implement the program changes identified in items 1 and 2, the program is being changed to add definitions and other provisions that will facilitate the clear and consistent identification of the emissions units subject to the permit program (i.e., affected units). For a "new stationary source," the affected emissions units will be all emissions units located to an undeveloped site. For a "project" at an existing stationary source, the affected emissions units will be all new or added emissions units and all modified emissions units that make up the project.
4. The program is being changed such that reconstruction of an emissions unit by the replacement of some of its components will no longer be treated differently from the modification of an emissions unit. Such changes will no longer be exempt if the potential to emit is not increased, but instead will only be exempt if the increase in the emissions rate is less than the exempt emission rates for a modified stationary source, just like any other modified emissions unit. Reconstruction of an emissions unit by replacing the entire emissions unit will continue to be exempt as a "replacement of an emissions unit" as long as the potential to emit does not increase as a result of that replacement. Reconstruction will only exist in the minor new source review program as it pertains to its applicability under the federal new source performance standards in 40 CFR Part 60.
5. The program is being changed such that certain transportable engines will no longer be considered as nonroad engines that are excluded from the definition of a stationary source. Emissions from such engines may now be subject to the provisions of the minor new source review program and subject to emissions control requirements.
6. The exemption for certain sized fuel burning equipment is being changed to (i) expand the exemption to include space heaters, (ii) reduce the maximum exemption size for natural gas-fired fuel burning equipment, and (iii) in ozone nonattainment and maintenance areas, aggregate similar types of fuel burning equipment that are included in a single project for the purpose of comparison with the exempt size criteria.
7. Exemptions are being added for (i) vegetative waste recycling/mulching operations, (ii) open pit incinerators subject to the open burning rule, and (iii) certain process testing and remediation projects that remain in existence for less than a year.
8. The program is being changed to remove the prohibition against exempting NSPS facilities.

9. Provisions are being added to provide for processing and issuing informational permit applicability determinations.
10. Provisions are being added to incorporate the federal requirements for the new PM_{2.5} air quality standard.
11. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program are being restructured to increase clarity.
12. Provisions are being added to allow terms and conditions of permits to be combined.
13. A number of other provisions have been rewritten to increase clarity, including: clarifying when to include fugitive emissions in determining permit applicability, how changes in stack height are subject to permit review requirements, how regulatory changes affect new and previous permit applications, which modifications are subject to public participation requirements, and how to make permit changes to accommodate exempt equipment replacements.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Richmond, Virginia on April 14, 2010. One person attended the hearing without offering testimony, and three additional sets of 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 February 1, 2010 in the Virginia Register and in seven major newspapers (one in each Air Quality Control Region) throughout the Commonwealth. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the department's list to receive notices of proposed regulation revisions. 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 for the proposal.

COMMENTS: Dominion Resources Services, Inc.

TEXT: We commend the department for its effort to streamline the Virginia minor NSR program requirements.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

2. **SUBJECT:** General support for the proposal.

COMMENTS: Virginia Manufacturers Association (VMA).

TEXT: VMA strongly supports revising Virginia's minor NSR regulations as proposed because it will greatly simplify the determination of whether a physical or operational change at a source triggers the minor NSR permitting requirements. This will streamline the permitting process and cut down on the delay and costs Virginia's businesses incur under the current minor NSR rules. This streamlining is not expected to have any significant effect on the level of statewide emissions. See the Department of Planning and Budget's Economic Impact Analysis, which states that "the effect of proposed changes on the statewide emissions and consequently on air quality is not expected to be significant." VMA's analysis leads to the same conclusion. We believe the air emissions impacts from switching from the source-wide applicability approach back to the individual-unit applicability approach will be a wash because some source changes that would not trigger minor NSR under the source-wide approach may trigger permitting requirements under the individual-unit approach and vice-versa. Thus, the greater regulatory certainty and reduced administrative burdens and costs of the newly revised minor NSR rules can be realized without jeopardy to air quality in the Commonwealth.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

3. **SUBJECT:** Best Available Control Technology (BACT) applicability for pollutants.

COMMENTS: Dominion Resources Services, Inc.

TEXT: The regulations in 9VAC5-50-260 B and 9VAC5-50-260 D include new language authorizing the department to impose permit limits at its discretion on any air pollutant on the premise that such a limit is necessary in order to implement BACT for "for any regulated pollutant that may be emitted from any affected emissions unit." [Emphasis added.] The intent of this addition is not clear. BACT requirements should be focused on a pollutant-by-pollutant basis for affected emissions units for which an emissions increase from that unit triggers minor NSR. To the extent that the addition of this new language is intended to allow the department to deviate from this approach for BACT, we oppose the language and suggest it be eliminated. Such a stringent and all-encompassing approach is overreaching and costly. It does not make sense to require costly emissions controls at units that are not undergoing a

physical or operational change. Moreover, applying BACT to all projects could have the effect of deterring certain pollution control projects that are compromised by secondary equipment that would otherwise not be required to consider BACT.

RESPONSE: The implementation of BACT under 9VAC5-50-240 and 9VAC5-50-260 usually results in a new predicted emissions rate for one or more regulated pollutants emitted from a process or emissions unit. The predicted emissions rate of the primary pollutant of interest is usually reduced, but there are often collateral increases or decreases in other regulated pollutants associated with that change. These collateral increases and decreases represent new predicted emission rates associated with the proper operation of the process and any BACT imposed on that process. Failure to set (or change) enforceable emissions limits on those collateral pollutant increases or decreases represents a failure to properly characterize and enforce BACT. The department has historically set enforceable permit limits on all such regulated pollutants. This proposed language accurately represents the existing permitting process for Minor NSR. This new language also does not imply that BACT is applied to any emissions unit other than "affected emissions units," which are only those that are new or otherwise physically or operationally changed. Pollution control projects are no longer implemented under provisions of the minor NSR program and 9VAC5-50-260. No change is made to the proposal in response to this comment.

4. **SUBJECT:** Incremental BACT.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA objects to the proposal to delete the last sentence in the definition of BACT (9 VAC 5-50-250). This sentence sets out important criteria governing how BACT is determined in minor NSR permitting, in contrast to major NSR permitting. Most particularly, VMA objects to the proposed elimination of "the cost effectiveness of the incremental emission reduction achieved." Incremental cost-effectiveness is an extremely useful determinant in setting appropriate BACT in minor NSR permitting. It makes no sense to require a source owner to install a much more costly emission control device as BACT if minimal additional emission reductions are achieved at an exorbitant additional cost. This provision has been a consideration in Virginia's BACT regulations for years and the purported rationale for this proposed change in the Agency Background Document for this rulemaking provides no compelling reason to delete this provision now. Thus, VMA believes the last sentence in the current BACT definition should be retained.

RESPONSE: The last sentence in the current definition of BACT contained some useful information concerning how BACT determinations may be accomplished for smaller sources that do not require the formal top-down analysis required for Prevention of Significant Deterioration (PSD) sources. Under the current Minor NSR definition of BACT and existing permitting procedures, a cost-benefit analysis is usually necessary only when there is no presumptive BACT or when a source believes that a presumptive BACT determination is inappropriate. DEQ supports determining BACT based upon an incremental cost-benefit analysis if a presumptive BACT determination is lacking or inappropriate, but the language in the existing definition is ambiguous and could be read to require such analysis or to

impose BACT that results in few controlled emissions for relatively large new sources or BACT that results in unenforceable emissions limitations. Instead of deleting the last sentence, it has been revised to clarify the intended additional considerations. This comment is appropriate and changes have been made to reflect the intent of this comment.

5. **SUBJECT**: Incremental BACT.

COMMENTER: Dominion Resources Services, Inc.

TEXT: In addition, the department proposes to eliminate the ability to evaluate "the cost effectiveness" of the incremental emission reduction achieved in the BACT determination process (accomplished by removal of the last sentence in the current BACT definition in 9VAC5-50-250 C). We strongly oppose this change. Incremental "cost effectiveness" is a very useful and economically efficient determinant in setting appropriate BACT in minor NSR permitting. It makes no sense to require a source owner to install a much more costly emission control device as BACT if minimal additional emission reductions are achieved at an exorbitant additional cost. This provision has been a consideration in Virginia's BACT regulations since 2002 in order to allow consideration of additional factors when making BACT determinations for sources subject to minor NSR as opposed to major NSR PSD review, and the department has provided no compelling justification for this proposed change. Air quality in Virginia has been steadily improving. "On the books" and "on the way" emission reductions in a variety of federal and state programs for both stationary and mobile sources will provide additional air quality improvements in the Commonwealth. Requiring stringent and potentially costly emission controls for minor emissions increases from small sources with little or no consideration of the environmental significance of the emissions increases relative to the cost of emission controls is punitive and simply not warranted. We urge the department to retain the current definition of BACT that allows for evaluation of the cost-effectiveness of incremental emission reductions.

RESPONSE: See the response to comment 4. Deletion of the last sentence does not eliminate the ability to evaluate the cost effectiveness of incremental emission reduction any more than the lack of such language in the same definition used for major new source review precludes such consideration. Nor does it mandate more costly emissions controls. The primary consideration for BACT under minor NSR will remain presumptive BACT for similar sources where one has been established and recent BACT for similar sources when there has been no presumptive BACT established by the board. When a cost-benefit analysis indicates that a presumptive BACT or a recent BACT is inappropriate, the remaining language allows the more appropriate BACT just as it did prior to 2002. However, instead of deleting the last sentence, it has been revised to clarify the intended additional considerations. This comment is appropriate and changes have been made to reflect the intent of this comment.

6. **SUBJECT**: BACT Applicability for individual emissions units.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: BACT should be applied only to the control of regulated air pollutants from affected emission units "for which there would be an uncontrolled emission rate equal to or greater than the [exemption] levels in 9VAC5-80-1105 C and D" (as applicable). The way 9VAC5-80-260 B and C are worded, BACT would apply to each and every "affected emissions unit" that is part of the new stationary source or "the project" if the uncontrolled emission rate of the new stationary source or project would exceed the applicable exemption level. VMA does not believe it makes any sense from an economic or environmental stand point to subject an emissions unit to a control technology requirement when emissions from that unit will not be substantial (in the case of new stationary source) or increase substantially (in the case of an emissions unit at an existing source). For example, requiring BACT at an affected emissions unit for an insubstantial 2 tpy increase in VOC emission from that unit makes little or no sense. The best gauge of "substantial" would be the exemption levels in 9VAC5-80-1105 C and D. This approach could be expressed by a simple wording changes such as: "An affected emissions unit shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emissions rate of the unit equal to or greater than the levels in 9VAC5-50-1105 D."

RESPONSE: It is inconsistent with the new source-wide applicability concept to exempt individual emissions units from a meaningful BACT determination, especially when the most conservative method of determining BACT, the cost-benefit analysis, would demonstrate that there are cost-effective methods of controlling emissions from one or more individual emissions units. The concept of BACT centers around the determination of what ways of reducing emissions are available that are both technologically feasible and economically reasonable. Artificially removing individual emissions units from consideration through an applicability determination (before a meaningful cost-benefit analysis is made) biases the cost-benefit analysis by discounting valid emissions reductions achievable through a technologically feasible BACT. No change is made to the proposal in response to this comment.

7. **SUBJECT**: BACT and debottlenecked emission units.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of continuing to apply BACT only to the physically or operationally changed emissions units and not to debottlenecked emission units.

VMA has expressed support of the amendment to the BACT provisions in 9VAC5-50-260.C to clarify that BACT does not apply to emission units that themselves do not undergo a physical or operational change, e.g., "debottlenecked" emission units. This has been EPA's and Virginia's longstanding approach. (See current 9VAC5-50-260 C: "This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur . . . as a result of physical change or change in the method of operation in the unit." [Emphasis added.]) This should remain Virginia's approach. It makes no sense

from a cost-benefit standpoint to require the expenditure of money for emission controls at a unit that itself is not undergoing a physical or operational change. It only makes sense to couple the cost of emission controls to the cost of modifying the unit. Furthermore, from a legal perspective, it may be unlawful to impose an NSR permitting requirement on an existing piece of equipment that itself is not undergoing a change that would trigger NSR. Typically it takes a higher threshold than merely permitting a source modification, *e.g.*, a NAAQS violation, to trigger a control requirement at an existing piece of unmodified equipment, *e.g.*, the imposition of reasonably available control technology in a nonattainment area. In short, Virginia's regulations should be clear that BACT applies only at a unit that itself undergoes a physical or operational change resulting in a nonexempt emissions increase from that unit.

VMA also strongly supports the regulatory changes necessary to make it clear that BACT is required only at "affected emissions units," not upstream or downstream "debottlenecked" units that are not modified. It has been longstanding EPA and department policy that BACT is applied only to existing emission units that themselves undergo a modification. See, for example, EPA's New Source Review Workshop Manual, Draft 1990, Section B.II, BACT Applicability ("The BACT requirement applies to each individual new or modified affected emissions unit . . .").

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

8. **SUBJECT:** BACT and uncontrolled emission rates.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to apply permit emissions limits representing BACT to any regulated pollutant emitted by any emissions unit at a new stationary source when the uncontrolled emissions rate of that pollutant from the source is greater than the exempt emission rate threshold. . . . The costs and benefits of the proposal to apply permit emissions limits representing BACT to any regulated pollutant emitted by any new or changed emissions unit in a project when the uncontrolled emissions rate increase of that pollutant from the project is greater than the exempt emission rate threshold.

VMA believes it makes no sense to apply BACT to new or modified emission units that would have uncontrolled emission rates below the relevant exemption rate thresholds. Take, for instance, the example of a project at an existing source where four emission units are modified resulting in a total 12 ton increase in the uncontrolled emission rate of VOC at the source. This source-wide increase is above the 10 tpy VOC exemption threshold rate in proposed 9VAC5-80-1105 D 1 so that this project would not be exempt from minor NSR review. However, suppose each of the four emission units (affected emission units) at the

source would experience at most a 3 ton/year increase in VOC uncontrolled emission rate. It doesn't make sense to impose BACT on each of these small emission increases. It would not be cost effective.

RESPONSE: See the response to comment 6. No change is made to the proposal in response to this comment.

9. **SUBJECT:** BACT applicability for pollutants.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to apply such permit emissions limits to other pollutants emitted by new or changed emissions units that may not exceed the exempt emission rate threshold as may be necessary to implement a BACT determination.

VMA objects to this vague language proposed in 9VAC5-50-260 B and C authorizing the department to impose permit limits at its discretion on any pollutant on the premise that such a limit is "necessary to implement" BACT for any other regulated pollutant. Once again to be clear, BACT should apply only to those regulated pollutants, on a pollutant-by-pollutant basis, emitted from any new affected emissions unit where the uncontrolled emission rate of the pollutant from that unit exceeds the exemption rate threshold for that pollutant specified in 9VAC5-80-1105 C 1 or from any modified affected emission unit where the increase in the uncontrolled emission rate of that pollutant from that unit exceeds the exemption rate threshold for that pollutant specified in 9VAC5-1105 D 1. There is too much opportunity to "back door" the BACT requirement to small emissions changes at units using this vague "necessary to implement" language. VMA's members advocate certainty in these revised regulations and we cannot discern any guiding principles for the implementation of this discretionary authorization for the department to impose BACT where clear applicability criteria are otherwise lacking. This language is totally unacceptable and should be deleted from 9VAC5-50-260 B and C.

RESPONSE: See the response to comment 3. No change is made to the proposal in response to this comment.

10. **SUBJECT:** Individual unit applicability approach to permit applicability.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The department proposed to convert from the source-based applicability approach of the current program back to an individual unit-based applicability approach in order to simplify the determination of whether a physical or operational change at a source triggers minor NSR permitting requirements. While we fully support efforts to simplify and streamline the permitting process, and agree that the rule should be amended to incorporate

the individual unit approach, we believe the regulations should retain a netting option as an option. This would allow a permit applicant the opportunity to net out while providing the department with assured continued protection of air quality since the reductions achieved through netting would be enforceable measures.

RESPONSE: Netting is a process of using federally enforceable emission reductions to offset proposed emissions increases, as a way of bypassing more stringent new source review program requirements. This works well for the major new source review programs because the emission reductions may be made federally enforceable through the minor NSR program, which has less stringent review, emission control, and public participation requirements. There is no acceptable alternative new source review program other than Minor NSR through which netted emission reductions may be made federally enforceable, so there is no way to make netting work under minor new source review. This incompatibility was the primary reason that this amendment was necessary. No change is made to the proposal in response to this comment.

11. **SUBJECT:** Permit applicability and designation of affected facility.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the clarification provided in 9VAC5-50-240.C that the provisions of this article do not apply to pollutants regulated under 9VAC5-60 (Hazardous Air Pollutant Sources).

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

12. **SUBJECT:** BACT applicability for new sources or projects.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The department needs to make clear that BACT is only required at "an affected emission unit" for which there would be an uncontrolled emission rate for a regulated pollutant equal to or greater than the exemption levels in 9VAC5-80-1105 C (for new sources) and D (for modifications or projects) for that pollutant. It should not be applied to upstream or downstream units that are not modified. As proposed, subsections 9VAC5-50-260.B and 9VAC5-50-260.C could be interpreted to require the application of BACT to each and every "affected emissions unit" that is part of the new stationary source or "the project" if the uncontrolled emission rate of the new stationary source or project would exceed the applicable exemption level. It has been longstanding U.S. Environmental Protection Agency (EPA) and department policy that BACT is applied only to new emission units and existing emission units that themselves undergo a modification.

We suggest the following changes to the proposed regulatory text of this section to clarify this concept:

9VAC5-50-260 B: A new ~~stationary source~~ affected emissions unit shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emissions rate of the unit equal to or greater than the levels in 9VAC5-50-1105 C.

9VAC5-50-260 C: ~~A project~~ An affected emissions unit shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emissions rate of the unit equal to or greater than the levels in 9VAC5-50-1105 D.

RESPONSE: 9VAC5-50-260 A states the central requirement in this section, which is that no owner shall allow their "affected facility" to emit pollutants in excess of the BACT emissions limitation. This concept of requiring BACT for the "affected facility" (which is defined in 9VAC5-10-20 C, and may include one or more emissions units) is an existing requirement and has not been changed. Clarification of subsection B is unnecessary because all emissions units at a new stationary source are "affected emissions units". The Department's proposed change to subsection C explicitly states that the "requirement applies to each affected emissions unit in the project" so clarification in this subsection is also unnecessary. No change is made to the proposal in response to this comment.

13. **SUBJECT:** Treatment of fugitive emissions in determining permit applicability.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The proposed amendments to 9VAC-5-80-1100 D would change how fugitive emissions are treated in determining minor NSR applicability. The approach in the current version of the regulations is that the addition of fugitive emissions to stack emissions that, by themselves, are below the minor NSR applicability thresholds will not be counted and cause a source or modification to trigger the minor NSR applicability thresholds. The department proposes to alter this longstanding approach of not including fugitive emissions to determine minor NSR applicability to an approach that minor NSR is triggered if fugitive emissions are added to stack emissions and that sum exceeds the minor NSR applicability thresholds. The department's rationale for the proposed change, "to avoid confusion about the meaning of this provision" is difficult to discern. We believe the meaning (that fugitive emissions are not counted if the inclusion of fugitives causes a stack emissions increase otherwise below the minor NSR threshold to exceed the threshold) is clear. There is no rationale for the change in approach that the department proposes. If the department believes this approach requires clarification, it should seek comment for clarification, not reverse it. Without adequate justification, 9VAC5-80-1100 D should remain as it has been – minor NSR is not triggered by the addition of fugitive emissions to otherwise exempt stack emissions.

RESPONSE: The proposed amendment to 9VAC-5-80-1100 D, taken together with the changes in 9VAC-5-80-1105 C 3 and D 3 do not change how fugitive emissions are treated in determining minor NSR applicability. The first sentence of the current requirement is unequivocal, "The fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article." The second sentence was less

clear. Due to a misplaced word "only," it can be read either to exclude fugitives in the applicability determination every time fugitives make a difference, or to exclude fugitives only when they are the only emissions considered. The Department has interpreted the second sentence in the only non-trivial way possible, to the effect that fugitive emissions are included when determining applicability, unless they are the only emissions considered. It has been the longstanding approach of the department to include fugitive emissions in the determination of Minor NSR applicability and not to exclude them, long before this language appeared in the regulation, but it may have been applied inconsistently in some cases because of this ambiguity. This amendment offers the best opportunity to correct and clarify this language, so that misinterpretation is unlikely in the future. No change is made to the proposal in response to this comment.

14. **SUBJECT**: Aggregation of contemporaneous increments.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The new subsection 9VAC5-80-1100 E adds the following language:

Where the construction of a new stationary source or a project is accomplished in contemporaneous increments that individually are not subject to approval under this article and that are not part of a program of construction of a new stationary source or project in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of any particular change under the provisions of this article. An incremental change is contemporaneous with the particular change and the date that the emissions increase from the particular change occurs.

The rationale for adding this new language is unclear. To the extent the intent of this provision is to address circumvention, that issue is already addressed through the anti-circumvention clause in 9VAC5-20-70 (General Provisions). There is also an anti-circumvention provision in the existing Article 6 rules at 9VAC5-80-1100 F.

We are concerned that this new provision can be interpreted to require the automatic aggregation of any and all emission increases from physical and operational changes at a facility during a five-year period. Emission increases from facility changes that are part of a single project or that are technically or economically dependent upon one another (and thus truly not separate projects) should be aggregated for purposes of determining minor NSR applicability. In contrast, emission increases from facility changes that are not directly related or dependent upon one another should be treated as separate projects for purposes of determining minor NSR applicability. This has been the longstanding approach of EPA and the department, and to the extent that subsection E is intended to alter this approach and impose a blanket approach where the department would require the automatic aggregation of otherwise separate and distinct projects, it should be deleted.

RESPONSE: This language is not new and it represents the "longstanding approach" of the regulation concerning circumvention in time. It existed in the applicability section of the

previous version of the minor NSR (9VAC5-80-10 A 4) and was used primarily to aggregate incremental changes over time which should have been, but were not, approved by the board as phases of the same project, and which had thereby improperly avoided permitting altogether or had avoided a proper BACT analysis by dividing up incremental emissions increases. It does not duplicate the circumvention requirement of 9VAC5-80-1100F, which contains the other two legs of circumvention; circumvention by a pattern of ownership and by a pattern of development over a geographic area. This requirement applies specifically to a "new source" or "project" and so it does not aggregate unrelated projects. No change is made to the proposal in response to this comment.

15. **SUBJECT**: New source performance standards (NSPS) limit on exemptions.

COMMENTER: Dominion Resources Services, Inc.

TEXT: With respect to the provisions regarding federal NSPSs in current 9VAC5-80-1100 E, we support the proposed deletion. There is no reason to limit the exemption of affected facilities subject to federal NSPSs by virtue of 9VAC5-80-1100 E 1 and 2 in the current regulations. We agree that automatically forcing NSPS-affected sources to apply for and obtain a minor NSR permit is not an efficient use of the agency's limited staff resources.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

16. **SUBJECT**: Grandfathering provision.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the addition of 9VAC5-80-1100 J, which clarifies that the previous provisions of this article will remain applicable for all permits for which applications are deemed complete (under 9VAC5-80-1160.B) prior to the effective date of these proposed amendments (when finalized).

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

17. **SUBJECT**: Fugitive emissions in determining permit applicability.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: The proposed amendments to 9VAC5-80-1100 D and 9VAC5-80-1105 C 3 and D 3 would substantially change the approach toward counting fugitive emissions in determining minor NSR applicability. The approach in the current version of the regulations is that the addition of fugitive emissions to stack emissions that are below the minor NSR applicability thresholds will not take a source or modification over the minor NSR applicability thresholds. The proposal alters this longstanding approach of not including fugitive emissions to determine minor NSR applicability to an approach that minor NSR is triggered

if fugitive emissions are added to stack emissions and that sum exceeds the minor NSR applicability thresholds. The department says the changes it proposes to 9VAC5-80-1100 D are "necessary to avoid confusion about the meaning of this provision." This is no rationale for the radical change in approach that is proposed. Moreover, confusion would actually arise from any across-the-board requirement to quantify fugitive emissions for purposes of determining minor NSR applicability. Existing emission factors for fugitive emissions from most types of facilities are characterized by a high degree of uncertainty. Furthermore, technologically and economically feasible means for measuring most fugitive emissions simply do not exist. Consequently, estimated quantities of fugitive emissions are highly suspect, and in the vast majority of cases, applying new source review to fugitive emissions becomes an exercise that values form over substance. Without adequate justification, 9VAC5-80-1100 D should remain as it has been – minor NSR is not triggered by the addition of fugitive emissions to otherwise exempt stack emissions. These same issues also apply to the exemption provisions of 9VAC5-80-1105 C 3 and D 3.

RESPONSE: See the response to comment 13. No change is made to the proposal in response to this comment.

18. **SUBJECT:** Applicability, aggregation.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: To the extent that 9VAC5-80-1100 E amounts to a rule of automatic aggregation of any and all emission increases from physical or operational changes at a facility during a five year period, VMA strenuously objects. VMA's concern is generated in part from the following statement in the Agency Background Document for the rulemaking: "The department is specifically seeking comment concerning the adequacy of the proposed regulation to address separate requests for exempt changes that would be subject to the new source review program if considered together." VMA is not sure what the department means by "separate requests for exempt changes." However, VMA objects to the addition of subsection E in 9 VAC 5-80-1100.

Emission increases from facility changes that are part of a single project or that are technically or economically dependent upon one another (and thus truly not separate projects) should be aggregated for purposes of determining minor NSR applicability. In contrast, emission increases from facility changes that are not directly related or dependent upon one another should be treated as separate projects for purposes of determining minor NSR applicability. This has been the longstanding approach of EPA and the department, and to the extent that 9VAC5-80-1100 E is intended to alter this approach, it should be deleted. If the department intends to apply 9VAC5-80-1100 E as an automatic aggregation provision, then it must notify the General Assembly that this provision is more restrictive than the applicable federal requirements.

RESPONSE: See the response to comment 14. No change is made to the proposal in response to this comment.

19. **SUBJECT**: New source performance standards (NSPS) limit on exemptions.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: With respect to the provisions in current 9VAC5-80-1100 E, VMA supports their deletion. There is no reason to limit the exemption of affected facilities subject to federal NSPSs as is the case by virtue of 9VAC5-80-1100 E 1 and 2 in the current regulations. VMA agrees that automatically forcing NSPS-affected sources to apply for and obtain a minor NSR permit is not an efficient use of the agency's limited staff resources.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

20. **SUBJECT**: Grandfathering provision.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA supports the certainty provided by 9VAC5-80-1100 J.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

21. **SUBJECT**: Aggregation of exempt equipment.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to aggregate the capacities of all similar equipment at a new source or a project that is now individually exempted by source type and size when considering whether or not that equipment should be exempt from permitting. . . . The costs and benefits of limiting the aggregation of the equipment capacities for this exemption to sensitive areas (such as non-attainment areas and maintenance areas) as opposed to allowing use of the exemption state-wide.

VMA believes each separate piece of emitting equipment should be considered individually in determining whether it is exempt from the minor NSR requirements. Further, the exemption should apply uniformly throughout the Commonwealth. There is no basis for distinguishing between attainment, nonattainment and maintenance areas in applying the size exemptions. The size exemptions are predicated on the notion that it makes no sense to subject smaller emission units to BACT and air permitting requirements. This rationale applies equally to all small pieces of equipment throughout the Commonwealth. Thus, there would be unjustifiable additional costs without demonstrable benefits if this exemption were denied to small pieces of equipment that happen to be located in nonattainment or maintenance areas.

RESPONSE: Historically, certain types of emissions units have been exempt on an emissions unit by emissions unit basis. As time progressed, it was recognized that if there were enough small emissions units constructed together that they could represent a significant increase in emissions and that, using efficiencies of co-location and type of emissions, they could together justify some additional emissions control. This was the basis for the emissions rate-based exemptions for facilities. The basis for considering additional emissions controls in sensitive areas is also well established both federally (as in the establishment of additional controls in nonattainment areas) and in state regulation (such as applying existing source standards for ozone only within VOC emission control areas). This provision does not imply that additional controls will be implemented upon the previously exempted types of equipment, only that they may be subjected to a cost-benefit analysis to determine if there are technologically feasible and economically reasonable controls that might result in beneficial emissions reductions in these sensitive areas. No change is made to the proposal in response to this comment.

22. **SUBJECT:** Aggregation.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The adequacy of the proposed regulation to address separate requests for exempt changes that would be subject to the new source review program if considered together.

VMA's members are strongly opposed to any such blanket approach whereby the department would automatically aggregate otherwise separate and distinct projects for purposes of triggering NSR requirements. We note that the department appears to have been implementing this approach on an ad hoc basis for some time, and VMA members have objected to this as unlawful and beyond the authority of the agency. The department has in some instances persisted with this illegal approach nonetheless. VMA will seriously consider appropriate legal action should the department persist with this approach and try to legitimize it with this proposed regulatory amendment.

RESPONSE: See the response to comment 21. No change is made to the proposal in response to this comment.

23. **SUBJECT:** Debottlenecking.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to discontinue the practice of considering emissions increases from debottlenecked emissions units when evaluating a project for minor NSR program permit applicability.

The switch from the source-wide net emissions increase approach to the unit-by-unit uncontrolled emissions approach dictates that emissions from emission units that themselves do not undergo a physical or operational change cannot be included in determining minor NSR applicability. There is no way to make this critical switch in applicability and at the same time add in emissions from "unaffected" units. Nor should emissions from debottlenecked units be included for purposes of determining minor NSR applicability. If such units are not subject to the BACT requirement (as has always been the case under EPA and Virginia regulations), it makes no sense to use debottlenecked emissions just to trigger minor NSR permitting and hence the BACT requirement for other units at the source that will undergo a physical or operational change. To simplify matters, simply take debottlenecked units out of the applicability equation.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

24. **SUBJECT:** Exemption for regulated pollutants for which a significant emission rate has not been established.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We strongly support the proposed new provision that would exempt the emission increases for a regulated air pollutant for which a minor source significant emission rate has not been established (9VAC5-80-1110 C, revised definition of "significant"). This would alleviate the requirement for a project that resulted in any emission increase, no matter how miniscule, and the requirement for every new source to undergo minor NSR for a regulated pollutant in the absence of an established significant emission rate for that pollutant. We believe this provision is crucial now that greenhouse gas emissions are considered regulated pollutants under the Clean Air Act and would prevent a possible scenario where virtually every new source or project would require a preconstruction permit.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

25. **SUBJECT:** Permit exemption for portable emissions units.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The requirement in 9VAC5-80-1105 A 1 that emissions from a portable emissions unit must be secondary emissions (subdivision c (1) of this subsection) unnecessarily narrows the availability of this exemption and should be deleted. There may be instances where a portable emission unit may be needed to augment a source's routine production. Such a unit would not qualify as a temporary facility, would not meet the definition of "secondary

emission" in 9VAC5-80-1110 C, and subsequently would not qualify for the proposed exemption.

The location of a portable emission unit at a site may be exempt if it meets certain conditions enumerated in 9VAC5-80-1105 A 1 c (1) through (6). The first of these is that "any new emissions from the portable unit are secondary emissions." This condition appears to virtually eliminate the portable unit exemption, since emissions from most portable units will never meet the definition of "secondary emissions" (emissions that "do not come from the stationary source itself"). Thus, 9VAC5-80-1105 A 1 c (1) should be deleted. Furthermore, subdivision (3), requiring emissions from portable units to be temporary, should also be deleted. The preceding subdivision (2) requires a portable emissions unit to be appropriately permitted, so there is no rational basis for requiring emissions to be temporary.

RESPONSE: The basis for the exemption for portable emissions units is that they are already permitted for a certain amount of emissions. Their special permit allows them to emit that much per year regardless of their location (within limits). If these sources alter their configuration or otherwise modify or construct new emissions units then they are subject to new source review requirements like every other source. This exemption is only for relocation, not for modification of the portable facility or construction of new emissions unit. Secondary emissions, however, are going to occur also. The act of relocation alone will produce secondary emissions. This clarifying language has been in place in guidance and as conditions of these portable facility permits for well over a decade, and do not interfere with relocation under this exemption. No change is made to the proposal in response to this comment.

26. **SUBJECT:** Permit exemption for replacement units.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: We support the new approach to replacement units proposed in 9VAC5-80-1105 A 2 to the extent that the term "removed" is interpreted to mean removed from service during normal operation of the replacement unit. However, the condition for a replaced emissions unit as proposed could be read to mean that the replaced unit must be physically removed from the source, which would be overly restrictive and unnecessary to assure compliance.

We also believe this approach should be applied to not only permanent replacements but also to temporary replacements. This would cover, for instance, the use of a temporary replacement boiler while a facility's regular boiler is undergoing repairs. However, to make this approach work, the regulations would have to accommodate a brief shakedown period when the temporarily replaced boiler would be operated at the same time as the replacement boiler.

In order to both clarify the intent of this replacement condition and accommodate temporary replacements, we suggest subsection A 2 a (5) be changed to read:

The replaced emissions unit is either removed from normal service during the period the replacement unit is operated or permanently shut down in accordance with the provisions of 9VAC5-20-220. Normal service does not include a limited shakedown period when both the temporarily replaced emissions unit and the replacement emissions unit may be operated simultaneously in order to facilitate the return of the replaced unit to normal service.

RESPONSE: Support for the proposal is appreciated. The term "removed" is not qualified in the regulatory language to mean "removed from service." Use of this exemption for temporary facilities was discussed during advisory group meetings and was discarded as not consistent with minor new source review. No change is made to the proposal in response to this comment.

27. **SUBJECT:** Permit exemption for stack height elevation reduction.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the exemption in 9VAC5-80-1105 A 2 b for projects involving a reduction in stack elevation outlet for stacks that serve facilities that have previously been determined to be exempt from the minor NSR program.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

28. **SUBJECT:** Permit exemptions, reduction of exemption level for natural gas-fired fuel burning equipment.

COMMENTER: Dominion Resources Services, Inc.

TEXT: In 9VAC5-80-1105 B 1 a (4), the department proposes to change the exemption for natural gas-fired fuel burning equipment from 50,000,000 Btu/hr to 30,000,000 Btu/hr. However, no explanation has been provided for this reduction, which would expand the number of sources and projects that would be subject to minor source NSR. This proposed change should not be made without reasonable justification.

RESPONSE: When the proposal was being drafted, there was an NSPS that was applicable to 30,000,000 Btu/hr natural gas-fired fuel burning equipment. Those provisions no longer exist. This comment is appropriate and changes have been made to reflect the intent of this comment.

29. **SUBJECT:** Permit exemption requiring aggregation of emission thresholds in nonattainment areas.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The addition of 9VAC5-80-1105 B 1 b requires the exemption levels for fuel burning equipment in 9VAC5-80-1105 B 1 a to be applied in the aggregate for each fuel type in ozone nonattainment and maintenance areas rather than on an individual basis. No justification for this requirement has been provided. To the extent the department believes additional measures may be needed to address local nonattainment issues, it can enforce such measures on a case-by-case basis and should not use a blanket approach in the context of minor NSR to do so. This provision should be eliminated.

RESPONSE: New source review permits are the tools for implementing additional measures to address the need for additional emissions controls for new or modified sources on a case-by-case basis. As time goes on, control technology gets better and cheaper. The need to investigate the cost effectiveness of such controls in sensitive areas, particularly where achieving attainment is difficult, is the justification for limiting this new source review permit program exemption in those areas. No change is made to the proposal in response to this comment.

30. **SUBJECT**: Permit exemption for temporary facilities.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: We support the addition of new provisions to exempt "temporary facilities" from minor NSR permitting (9VAC5-80-1105 B 13) and believe the proposed conditions under which this exemption would apply are generally reasonable. Under the federal prevention of significant deterioration (PSD) program, temporary emissions are ones which last for two years unless the Administrator determines that a longer period would be appropriate (45 FR 52728). Since the magnitude of emissions subject to minor NSR is less than the amount of emissions evaluated under PSD review, it seems reasonable that a minor NSR program could also define temporary emissions as those that last for no more than two years as well. Furthermore, this would provide added incentive for undertaking temporary projects such as test burns of alternative renewable fuels such as switchgrass or other non-fossil fuels. If a unit's uncontrolled emission rates would not exceed these exempt emission rates, the unit would be exempt anyway and wouldn't need to fit under the new temporary unit exemption. Accordingly, we request increasing the 12-month temporary emission exemption as proposed in 9VAC5-80-1105 B 13 a to two years.

RESPONSE: Averaging emissions over a year is the EPA-accepted basis for exemptions by emissions rate. The exemption was created with this in mind, so that it would be acceptable to EPA under existing NSR rules. These facilities would not be exempt under the existing Article 6 without the additional qualifications stated in that exemption. No change is made to the proposal in response to this comment.

31. **SUBJECT**: Permit exemption for alternative fuels or raw materials.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: 9VAC5-80-1105 A 1 e addresses a permit exemption for switches to alternative fuels or raw materials. Subdivision (1) of this subdivision reflects recent changes to the State Air Pollution Control Law by the General Assembly designed to make it easier for source owners to switch to alternative fuels and raw materials. However, subdivision (2) appears to eliminate the exemption by requiring that any such switch "not be subject to review under this article [6] as a project." ("Modification" is changed from the current wording to "project" in the proposed wording.) However, aren't all projects "subject to review" under the minor NSR regulations and thus ineligible for this exemption? In order to preserve the legislative intent of this exemption, subdivision (2) must be deleted.

VMA would also like to point out that any switch to an alternative fuel or raw material that does not increase the uncontrolled emission rate of any regulated pollutant is, by definition, not a "modification" and, therefore, does not trigger the requirement to obtain a minor NSR permit prior to the switch. Thus, VMA wonders about the general utility of the exemption in 9VAC5-80-1105 A 1 e which, by virtue of the first sentence in subdivision (1), requires a decrease in emissions (except for certain switches from residual oil to animal, fish or vegetable oil fuels). For example, if a raw material switch would result in decreased emissions, it would inherently, by virtue of the definition of "modification," not require a minor NSR permit, and in such a case, the first sentence in 9VAC5-80-1105 A 1 e (1) would be meaningless but misleading.

RESPONSE: The exemption in 9VAC5-80-1105 A 1 e explicitly ensures that such alternative fuel switches, under certain conditions, will not meet the definition of modification and will not be subject to review under Article 6. The exemption is written to comply with statutory language. However, differences between the definition of "modification" (uncontrolled emissions) and the exemption (emissions) language, along with the lack of a requirement for a trial burn demonstration in certain cases, allow the possibility that a source making a change to an alternative fuel will be subject to minor NSR program without being aware of it. There is no de minimus guarantee for this exemption like there is with exemptions under subsections B through D of the exemptions section, so the exemption depends entirely upon a fuel switch not meeting the definition of "modification." Subdivision 2 of that exemption may restate the obvious, but interpretational issues and lack of a trial burn aside, the source is not exempt if the switch meets the definition of modification (in this case). The addition of subdivision 2 is important in making it clear that the lack of a trial burn does not protect a source from being subject to minor NSR program requirements. No change is made to the proposal in response to this comment.

32. **SUBJECT**: Treatment of fugitives in a significant emission rate determination

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the addition of new language that clarifies that new sources and projects for which all of the emissions considered in calculating the uncontrolled emission rate are fugitive emissions are exempt from minor NSR. (9VAC5-80-1105 C 3 for new sources; 9VAC5-80-1105 D 3 for projects).

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

33. **SUBJECT:** Significant emission rate for fine particulate matter (PM_{2.5})

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The exempt uncontrolled emission rate for PM_{2.5} for projects is proposed to be 5 tons per year (tpy). This is less than the 6 tpy rate set in the drafts of the regulation agreed upon by the regulatory advisory group established in 2006 to advise the agency in the development of these regulations. The department has provided no explanation for the decrease from 6 to 5 tpy. The exemption emission rate of 10 tpy for PM_{2.5}, established for new sources (in 9VAC5-80-1105 C 1), is 40 percent of the of the 25 tpy exemption emission rate for total PM. A 6 tpy rate for PM_{2.5} for projects would likewise be 40 percent of the exemption emission rate of 15 tpy that is proposed for total PM (for projects). Accordingly, the exempt uncontrolled emission rate for PM_{2.5} for projects in 9VAC5-80-1105 D 1 should be established at the 6 tpy rate set during the advisory group discussions.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

34. **SUBJECT:** Definition of "construction."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The term "demolition" should not be included in the definition of construction (9VAC5-80-1110 C). Demolition is a one-time process and the resultant emissions are not permanent. In addition, the definition should address an "increase" in the uncontrolled emission rate rather than a "change". Dominion suggests the proposed definition be modified to read as follows:

"Construction" means fabrication, erection, installation, ~~demolition~~, relocation, addition, replacement or modification of an emissions unit that would result in a ~~change~~ an increase in the uncontrolled emission rate of the unit.

VMA is not sure why the phrase "that would result in a change in the uncontrolled emissions rate" has been added and would prefer to have critical definitions in both minor and major NSR as consistent as possible. However, to the extent the department feels is it necessary or useful to embellish this definition, it should be revised to read as suggested by Dominion. Substitution of the word "increase" for "change" is particularly important, since "demolition" is proposed to be included in the definition of "construction." Historically, demolition has not routinely been considered to be construction. If demolition will now be routinely considered to be construction, "change" should be replaced with "increase."

RESPONSE: The addition of the terms "demolition," "installation," and "modification, and the addition of the phrase referring to a "change" in emissions were all intended to improve

the consistency of the definition of "construction" between the NSR programs. Making the changes recommended in this comment would fundamentally affect the concept of commencing construction and the definition of "begin actual construction" to the detriment of NSR program consistency. No change is made to the proposal in response to this comment.

35. **SUBJECT**: Definition of "emission unit."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The proposed definition of an "emissions unit" (9VAC5-80-1110 C) to mean "any part of a stationary source which emits or has the potential to emit any regulated air pollutant" (emphasis added) is very broad in scope. The regulatory advisory group spent considerable time discussing the need for clarification of the meaning of the term "emissions unit." Units that are operationally linked but perform functionally different operations and could operate independently should not be aggregated into one "emissions unit." The definition of "emissions unit" for purposes of 9VAC5-80, should be revised to make it clear that the term is intended to apply to the smallest discreet piece of emitting equipment and not to broad aggregations of operationally linked but functionally independent units. For example, a coating mixer and a coating applicator are operationally linked because the mixer mixes the coatings in proper proportions for use by the coating applicator. While these two units are operationally linked, they perform functionally different operations and could operate independently. They should not be aggregated into one "emissions unit." The advisory group's recommendation to include such clarification should have been incorporated.

RESPONSE: At the end of the advisory group's meetings there was a general consensus that the definition should be changed, but because there was no consensus on how to change the definition, the recommendation of the advisory group was to make no change. No change is made to the proposal in response to this comment.

36. **SUBJECT**: Definition of "major modification."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: For clarification, we recommend that the qualification "For purposes of this article" be inserted at the beginning of this definition (9VAC5-80-1110 C) in order to ensure that this definition, which differs from the definition of "major modification" elsewhere in Virginia's air regulations, applies only to the minor NSR regulations in Article 6.

RESPONSE: This particular definition of "major modification" cannot apply to another regulation unless specifically referenced by the other regulation. Likewise, the definitions of "major modification" specific to other individual articles in 9VAC5-80 cannot apply to Article 6 unless specifically referenced. Note that 9VAC5-80-1100 is introduced by paragraph A, which states, "For the purpose of applying this article in the context of the

Regulations for the Control and Abatement of Air Pollution . . ." (Emphasis added.) No change has been made to the proposal as a result of this comment.

37. **SUBJECT**: Definition of "modification."

COMMENTER: Dominion Resources Services, Inc.

TEXT: The proposed definition (9VAC5-80-1110 C) includes a list of actions that will not be considered as physical changes or change in the method of operation, including "Use of an alternative fuel or raw material that the emission unit is approved to use under any new source review permit" (see subdivision 5). First, to the extent that use of an alternative fuel is a previously approved activity for an emission unit, the need for such activity to be deemed "not considered as a physical change or change in method of operation" by way of this definition is superfluous. Second, the inclusion of this language implies that the use of an alternative fuel (for temporary test burns, for example) would require to already have received approval. This is in direct conflict with the exemption provisions of 9VAC5-80-1105 A 1 e (1) and (2) for the use of alternative fuels. Subdivision 5 should be deleted.

RESPONSE: Changes to this definition are not just a reorganization of it's component parts. The original exclusions to the definition often reflect specific concerns raised over time by individuals that wanted confirmation that their changes are not modifications. This provision preserves one of those concerns. It may restate the obvious, but is clear and meaningful to some segment of the regulated public. No change has been made to the proposal as a result of this comment.

38. **SUBJECT**: Definition of "nonroad engine."

COMMENTER: Dominion Resources Services, Inc.

TEXT: The proposal strikes subdivision 3 from the definition of a "nonroad engine" (9VAC5-80-1110 C), which would eliminate the nonroad engine exemption for an engine that "by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another." Although these types of engines are also captured in the definition of "portable," they would only qualify for exemptions if they meet the exemption criteria for a portable emissions unit established in 9VAC5-80-1105 A 1 c, which includes the requirement that the portable unit is either subject to a minor NSR permit or a general permit. We are concerned that this would apply to equipment such as rental pumps, welding equipment or conveyor belts. Emissions from many engines servicing these types of equipment are already regulated by the federal government at the time these engines are manufactured and are temporary emissions at a facility. It is therefore not necessary to regulate these emissions in a minor source NSR program. We urge the department to either retain subdivision 3 of this definition or clarify in 9VAC5-80-1105 A 1 c that these emissions are exempt from minor source NSR.

RESPONSE: Non-emergency engines that are supply portable equipment should be subject to new source review if they are large enough such that their emissions exceed the exempt

emission rates of 9VAC5-80-1105 C and D. No change has been made to the proposal as a result of this comment.

39. **SUBJECT**: Definition of "precursor pollutant."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The department needs to clarify that exempt uncontrolled emission rates and significance levels for sulfur dioxide (SO₂) and nitrogen oxides (NO_x) are 40 tpy, notwithstanding their status as precursors to PM_{2.5}. It must also clarify that in spite of their roles as precursors to PM_{2.5}, the direct emissions of SO₂ and NO_x are not included in determining whether the exempt uncontrolled emission rates and significance levels of PM_{2.5} are triggered.

It appears something is missing in this definition in subdivision (3), which should read: "Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations." The inclusion of "precursor pollutants" as "regulated pollutants" raises the question of whether this effectively reduces the exempt uncontrolled emission rates and the significance levels for SO₂ and NO_x. For example, the exempt uncontrolled emission rate for SO₂ in proposed 9VAC5-80-1105 C is 40 tpy, but the PM_{2.5} exemption rate is 10 tpy. Since SO₂ is a precursor to PM_{2.5}, is the effective exemption rate for SO₂ now 10 tpy rather than 40 tpy? Similar issues arise with respect to the disparity between the significance levels for SO₂ and NO_x (40 tpy) and PM_{2.5} (10 tpy). The regulation should be amended to make it clear that the exempt uncontrolled emission rates and significance levels for SO₂ and NO_x are 40 tpy notwithstanding their status as precursors to PM_{2.5}.

RESPONSE: PM_{2.5} is a unique pollutant which has its own NAAQS and its own threshold and significance level. Just as NO_x and VOC do not have two different significance levels, one as precursor to ozone and one as an individual pollutant, SO₂ and NO_x would not have a different significance level as a precursor to PM_{2.5}. Therefore, the language as written is appropriate. No change has been made to the proposal as a result of this comment.

40. **SUBJECT**: Definition of "significant" for volatile organic compounds (VOCs).

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: Subdivision a of the proposed definition of "significant" (9VAC5-80-1110 C) sets the significance level for VOCs at 25 tpy statewide. Currently, the VOC significance level is 40 tons per year everywhere in the Commonwealth except the Northern Virginia ozone nonattainment area by virtue of its former serious ozone nonattainment classification relative to the 1-hour ozone standard. Unless the department can provide justification for this change, the significance level for VOC should be restored to 40 tpy, except for ozone nonattainment areas classified as serious and above.

RESPONSE: The definition of significant is important for determining if a change is a "major modification." In the minor NSR program, this has meaning within the context of public participation. Currently public participation is required for major modifications using the significance levels in the major new source review programs. A 40 ton per year threshold is more consistent with the significant emissions increase currently used to determine if a modification is a major modification, but it is not conservative enough to reflect significance of minor NSR "major modifications" in some nonattainment areas. This difference can be provided for, however, and so a 40 ton per year threshold for all other areas can be restored. This comment is appropriate and changes have been made to reflect the intent of this comment.

41. **SUBJECT:** Definition of "significant" for an unlisted regulated pollutant.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the proposed new subdivision b of the definition of "significant" (9VAC5-80-1110 C) that states that, "In reference to an emissions increase for a regulated air pollutant not listed in subdivision a of this definition, there is no emissions rate that shall be considered significant." The addition of this new provision would exempt the emission increases for a regulated air pollutant for which a minor source significant emission rate has not been established, and would alleviate the requirement for a project that resulted in any emission increase, no matter how miniscule, and the requirement for every new source to undergo minor NSR for a regulated pollutant, in the absence of an established significant emission rate for that pollutant. We believe this provision is crucial now that greenhouse gas emissions are considered regulated pollutants under the Clean Air Act.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

42. **SUBJECT:** Definition of "synthetic minor."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The definition of "synthetic minor" (9VAC5-80-1110 C) as proposed could be read to imply that only sources that have "taken restrictions" through a permit would qualify for status as a synthetic minor. There may be instances in which applicable, federally enforceable restrictions, such as NSPSs or maximum achievable control technology standards, might operate to limit the potential to emit to minor status for certain sources. In this case it would not be appropriate to say the source "has taken" the restriction (for example, by permit). We suggest the phrase "is subject to one or more restrictions" replace "has taken a restriction" in this definition.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

43. **SUBJECT:** Definition of "temporary facility."

COMMENTS: Virginia Manufacturers Association (VMA).

TEXT: VMA supports new provisions in the minor NSR regulations to handle temporary facilities, e.g., process pilot projects.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

44. **SUBJECT:** Definition of "toxic pollutant."

COMMENTS: Virginia Manufacturers Association (VMA).

TEXT: We could not find 9 VAC 5-60-92.B cited in this definition.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

45. **SUBJECT:** General provisions.

COMMENTS: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: We support insertion of the phrase "Except as provided in 9VAC5-80-1105 A 2 b" at the beginning of 9VAC5-80-1120 C to clarify that the exemption for reduction in stack height for sources that have previously been determined to be exempt from the minor NSR program (provided in 9VAC5-80-1105 A 2 b) is preserved.

The term "net emissions increase" in 9VAC5-80-1120 G should read, "increases in uncontrolled emission rates," since term "net emissions increase" in 9VAC5-80-1110 C is being eliminated.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

46. **SUBJECT:** Action on permit application.

COMMENTS: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: 9VAC5-80-1160 A provides that a source owner may request a "nonbinding applicability determination" from the department and specifies that the department must respond to the applicant within 30 days of the request. We take no particular issue with the inclusion of this new language, to the extent that it does not infer a new requirement that a source owner must request a nonapplicability determination in order to rely on its own independent determination that a project is exempt. The provision requires a timely (30-day) response on the part of the department, which could be helpful to the applicant if significant issues are identified up front by the department.

It has been established EPA and Virginia policy since the inception of the federal and state air permitting programs that it is the source owner's obligation in the first instance to determine whether a particular new source or change to an existing source requires a permit. There has never been, nor should there ever be, a requirement that a source owner ask the department (or EPA) for a nonapplicability determination prior to undertaking a project that the source owner has determined, on a sound basis, to be exempt from an air permitting requirement. On the other hand, this provision's reference to the (non)applicability determination by the department as "nonbinding" indicates that a source owner must be very wary of relying on such a determination. If a nonapplicability determination is nonbinding, how can a source owner be sure that the department (or EPA) won't subsequently repudiate it and take enforcement action against an owner who relies on it to proceed with construction or modification without a permit? In short, a source owner with the department's nonbinding nonapplicability determination proceeds at the owner's peril just as the owner would if he proceeded without it.

RESPONSE: There is no requirement for an owner to request this nonbinding applicability determination. The proposed language makes that clear with the use of the permissive verb "may." No change is made to the proposal in response to this comment.

47. **SUBJECT:** Action on permit application.

COMMENTER: Mirant Potomac River Generating LLC

TEXT: Mirant is suggesting a simple, commonsense addition that would streamline and expedite the permitting process for projects that reduce emissions. This is needed to counteract recent developments at the federal level that have eliminated alternatives to permitting for such activities, unnecessarily delaying projects that will reduce emissions. For example, the United States Court of Appeals for the District Court of Columbia vacated the pollution control project exemption (see *State of New York v. EPA*, 413 F.3d 3, 40-42, D.C. Cir. 2005). More recently, EPA Region II has announced that the concept of "project netting" specifically provided for at 40 CFR 52.21(a) is no longer authorized. (Letter from Barbara A. Finnazzo, Director of Environmental Planning and Protection, EPA Region II to Kathleen Antoine, Environmental Director, HOVENSA, LLC; interpreting the phrase "sum of the differences" to mean "increases only.") Virginia's current proposal would allow a prospective applicant to request a "nonbinding" nonapplicability determination (9VAC5-80-1160 A); however, given the severe consequences of EPA's NSR enforcement initiative, prospective applicants are unlikely to rely on any determination that is "nonbinding."

To provide adequate certainty for applicants seeking to reduce emissions without the delay of the minor NSR permitting process, Mirant suggests adding language offering prospective applicants the option of requesting a "No Emissions Increase Permit," which would be issued by the department upon a determination that post-project emissions would not exceed past allowable emissions for any pollutant. This permit would cap emissions on a unit-by-unit basis at those past allowable emissions. The language would be added as 9VAC5-80-1160 H as follows:

H. In the alternative, an applicant may submit a permit application for a "No Emission Increase Permit" (NEIP) documenting past allowable emissions and projected future actual emissions. Upon a demonstration that the projected future actual emissions will not exceed past allowable emissions on a pollutant-by-pollutant, unit-by-unit basis, the department shall issue a NEIP limiting emissions for each pollutant from each unit referenced in the NEIP application to the specified past allowable emissions levels.

In effect, this would allow improvements to be made in the emissions rates of one or more pollutants without having to address permitting of pollutants that are unaffected, in the sense of causation, by the improvements. For example, in the case of a plant that seeks to install low NO_x burners, it is unnecessary to require submission of a minor NSR permit application or processing of the application regarding SO₂ since the emissions of SO₂ are not affected (i.e., no increase in SO₂ emissions is caused) by the low NO_x burners. We note that the proposed regulations already state that to the extent the proposed regulations are inconsistent with federal regulations the latter govern, so there is no potential for conflict with federal law.

RESPONSE: A nonbinding applicability determination should be sufficient to provide certainty to sources unsure of their applicability status. No change is made to the proposal in response to this comment.

48. **SUBJECT:** Public participation.

COMMENTER: Dominion Resources Services, Inc.

TEXT: In 9VAC5-80-1170 D 3, the department needs to clarify that the 100 tpy threshold, applied to a project that results in an increase in the potential to emit of any regulated pollutant that would equal or exceed that threshold, and triggering the requirement for a 30-day comment period, does not apply to greenhouse gases until a significant emission rate has been established for greenhouse gases and the department has developed and solicited for public review and comment an appropriate threshold level for greenhouse gases that is commensurate with a yet-to-be determined significant emission rate. Subjecting projects that result in an increase in the potential to emit greenhouse gases as low as 100 tpy to a 30-day comment period would overwhelm department resources and cause extensive permitting delays.

RESPONSE: We agree that a 100 tpy threshold is inappropriate for greenhouse gases, and plan to address this issue in a future action. No change has been made to the proposal as a result of this comment.

49. **SUBJECT:** Public participation.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: Under 9VAC5-80-1290 C, if a significant permit amendment must undergo the public notice, comment and hearing process specified in 9VAC5-80-1170 D and E, the public participation process should be limited exclusively to the subject of the significant permit amendment. The remainder of the permit is not open for public comment. 9VAC5-80-1290 C should state this limitation on public participation for a significant permit amendment.

RESPONSE: 9VAC5-80-1290 C specifies that the provisions of 1170 D and E apply to the requested change, with the intention that the entire permit is not automatically opened for review and comment. However, if other conditions are affected by the requested change, such as recordkeeping provisions for a requested change in monitoring, those modified provisions might also be subject to comment. There is no language that would make these finer points clear without unnecessarily restricting either the public or the department. The department will implement this provision to ensure that the permit is not opened for comment inappropriately. No change is made to the proposal in response to this comment.

50. **SUBJECT**: Minor permit amendments

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The proposed addition of subdivision 1 to 9VAC5-80-1280 C would narrow the ability to rescind a permit condition when the underlying legal basis for that condition no longer applies only if such condition does not "cover" a regulated air pollutant. If a permit term is obsolete or unnecessary because of an underlying change in the law, the permit condition should no longer be legally enforceable and should be removed from the permit regardless of whether the condition involves a regulated pollutant or other matter.

This provision is confusing and in its widest application will virtually eliminate the usefulness of this rescission provision. What does it mean for a permit condition to "cover" a regulated pollutant? Obviously, a permit condition setting an emission limit would "cover" a regulated pollutant. Take the classic example of the delisting of acetone as a VOC. This proposed new qualification in 9VAC5-80-1280 C (1) would appear to preclude the elimination of a permit term setting a VOC emission limit even though, prior to the delisting of acetone, acetone was the only VOC emitted. That's because, as stated in subdivision C (1), the permit condition "covers a regulated air pollutant," VOC. If a permit term is obsolete or unnecessary because of an underlying change in the law, the permit condition should be expunged from the permit no matter what.

This proposed revision should be deleted.

RESPONSE: A previous revision to the minor new source review program was withdrawn for the lack of this important provision. The cited example would be an example of how the new provision works. Acetone would no longer be a VOC and would no longer be a regulated pollutant. Under subdivision 2, the VOC emissions would drop to zero and there would not longer be any regulated pollutants emitted under this hypothetical one-pollutant permit. Under that scenario, all of the applicable terms of the permit could be rescinded.

This provision is critical to protecting the program, and is sufficient to allow rescission of permit terms and conditions as intended. No change is made to the proposal in response to this comment.