



## Final Regulation Agency Background Document

<b>Approving authority name</b>	State Air Pollution Control Board
<b>Primary action</b>	9VAC5-45
<b>Secondary action(s)</b>	None
<b>Regulation title</b>	Regulations for the Control and Abatement of Air Pollution
<b>Action title</b>	Consumer and Commercial Products (Rev. D06)
<b>Date this document prepared</b>	November 22, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

A new chapter (9VAC5-45) is established for the control of volatile organic compound (VOC) emissions from various consumer and commercial products in the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The new chapter consists of two parts. The first part of the new chapter contains general requirements pertaining to all of the types of consumer and commercial products regulated. The second part is composed of articles that contain VOC content and emission standards for individual types of consumer products and contain the control technology, testing, monitoring, administrative, recordkeeping and reporting requirements necessary to determine compliance with each of the applicable standards.

The new chapter includes two articles that control VOC emissions from portable fuel containers and spouts. As proposed, these articles implement design, performance, and labeling standards for portable fuel container products before and after January 1, 2009 and prohibit owners from manufacturing, distributing, and selling noncompliant products.

The new chapter includes two articles that control VOC emissions from certain types of consumer products. As proposed, these articles implement VOC content standards for some individual product categories before and after January 1, 2009 and prohibit owners from manufacturing, distributing, advertising or selling noncompliant products.

The new chapter includes an article for the control of VOC emissions from architectural and industrial maintenance coatings which implements VOC content standards for all such coating products and prohibits owners from manufacturing, distributing, selling and using noncompliant products.

The new chapter includes an article that controls VOC emissions from adhesives, adhesive primers, sealants and sealant primers which implements VOC content limits for those products and prohibits owners from manufacturing, distributing, selling or applying noncompliant products.

Finally, the new chapter includes an article that controls VOC emissions from asphalt paving operations, which prescribes the use of emulsified asphalt coatings except for the purpose of coating residential driveways and prohibits the mixing, storage and application of noncompliant products.

In the final regulation, the applicability dates and compliance dates for the new VOC emissions standards for portable fuel containers, consumer products, and adhesives and sealants are revised from January 1, 2009 to a future date more than five months after the publication date of the final regulation. Also, some recordkeeping requirements have been reduced from five years to three years. Finally, a phase-in period is established for standards that apply to the use of single-ply roof membrane adhesives and sealants, and the compliance date for manufacturing, distribution and sale of those products is delayed until the phase-in period has been completed.

**Statement of final agency action**

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

On November 20, 2009, 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, Consumer and Commercial Products (9VAC4-45, Articles 1 through 7). 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.*

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The purpose of these regulations is to require owners to limit emissions of air pollution from portable fuel containers, certain consumer products, architectural and industrial maintenance coatings and paving operations to the level necessary for (i) the protection of public health and welfare, and (ii) the attainment and maintenance of the air quality standards. The proposed amendments are being made to adopt new and revised standards for the control of VOC emissions from adhesive and sealants, portable fuel containers, and certain consumer products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the 8-hour ozone standard and to implement contingency measures within former nonattainment areas that have been redesignated as ozone maintenance areas.

### 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.*

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The proposed regulatory action adds a new chapter (9VAC5-45) specifically for regulations pertaining to consumer and commercial products and is applicable to specific product types and the owners that are involved in the manufacture, distribution, retail sales and in some cases, the marketing and use of those products. In Part I of the new chapter, special provisions specify the general testing, monitoring, compliance, notification, recordkeeping and reporting requirements that are applicable to all articles in the new chapter and specify certain other sections of the regulations that are not generally applicable. Exceptions to the special provisions are addressed in each individual article of the new chapter.

In Part II of the new Chapter 45:

1. The proposed regulatory action establishes standards for portable fuel containers for products manufactured before and after an applicability date for new standards as Articles 1 and 2 in Chapter 45, respectively. These new articles apply to all of the products subject to the current provisions of 9VAC5-40, Article 42, Emission Standards for Portable Fuel Container Spillage. This applicability date for the new standards will be between five and six months after the publication of the final regulation in the Virginia Register (hereafter, "the new standards' applicability date"). Article 1 clarifies some Article 42 exemptions and definitions, adds another exemption category, removes obsolete standards and their associated administrative requirements, and provides criteria for sell-through of products. Because Article 1 applies to all products manufactured before the new standards' applicability date and is designed to replace 9VAC5-40, Article 42, the compliance schedule proposed for Article 1 is the same as that in 9VAC5-40, Article 42. Article 2 applies to all portable fuel container products manufactured on or after the new standards' applicability date and requires board pre-certification of new portable fuel container products as compliant with new labeling requirements and with new and more stringent design and performance standards. Article 2 also includes applicability to a new category of owner, and adds (i) new and revised exemptions, (ii) new certification procedures, (iii) new testing standards, and (iv) alternative compliance provisions for innovative products over those provisions now applicable under 9VAC5-40, Article 42. The new Article 2 specifies a compliance deadline no later than the new standards' applicability date. 9VAC5-40, Article 42 will be repealed at an appropriate time after the standards in the new Articles 1 and 2 are effective.

2. The proposed regulatory action establishes standards for consumer products manufactured before and after the new standards' applicability date as a new Articles 3 and 4 in Chapter 45, respectively, and applies to all of the products subject to the current provisions of 9VAC5-40, Article 50, Emission Standards for Consumer Products. Article 3 pertains to consumer products manufactured before the new standards' applicability date, clarifies some definitions and standards, makes the Alternative Control Plan procedures more flexible, revises labeling, reporting and other administrative requirements, and clarifies sell-through criteria. Because Article 3 applies to all products manufactured before the new standards' applicability date and is designed to replace 9VAC5-40, Article 50, the compliance schedule proposed for Article 3 is the same as 9VAC5-40, Article 50. Article 4 applies to all consumer products manufactured after the new standards' applicability date and includes all of the changes made in Article 3, adds more definitions and standards for some new product categories and establishes new labeling and other administrative requirements. Article 4 specifies a compliance deadline no later than the new standards' applicability date. 9VAC5-40, Article 50 will be repealed at an appropriate time after the standards in the new Articles 3 and 4 are effective.

3. The proposed regulatory action establishes standards for architectural and industrial maintenance coatings and incorporates all of the provisions of 9VAC5-40, Article 49, Emission Standards for Architectural and Industrial Maintenance Coatings into a new Article 5 in Chapter 45, except that the new Article 5 removes some obsolete reporting requirements and changes the remaining one to a recordkeeping requirement. Because the standards and other provisions of the new Article 5 are not substantively changed from what is in 9VAC5-40, Article 49, no new compliance dates are proposed. 9VAC5-40, Article 49 will be repealed at an appropriate time after the new Article 5 standards are effective.

4. The proposed regulatory action will add a new regulation, Article 6 in the new chapter 45 that establishes new standards for adhesives and sealants. The provisions of this article apply to owners who sell, supply, offer for sale or manufacture for sale commercial adhesives, sealants, adhesive primers or sealant primers that contain volatile organic compounds within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The provisions will also apply to owners that use, apply for compensation or solicit the use or application of such products in those areas. Exempted from the regulation is any such product manufactured in the Northern Virginia or Fredericksburg VOC Emissions Control Areas for shipment and use outside of these areas. The provisions of this regulation will not apply to a manufacturer or distributor who sells, supplies, or offers for sale such products that do not comply with the VOC standards as long as the manufacturer or distributor can demonstrate both that the product is intended for shipment and use outside of those areas and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the product is not distributed in those areas. A number of product-specific exemptions are also allowed. VOC content limits are specified for different product categories. Control technology guidelines are offered as an alternate means of achieving compliance with the standards. Test methods, registration requirements and recordkeeping procedures are provided. This article specifies a compliance deadline no later than the new standards' applicability date.

5. The proposed regulatory action establishes standards for asphalt paving operations and incorporates all of the provisions of 9VAC5-40, Article 39, Emission Standards for Asphalt Paving Operations as a new Article 7 in Chapter 45. Applicability provisions in Article 7 apply to owners instead of sources and a new definition of paving operations is added that clarifies the types of operations to which the provisions of the regulation apply. Since the standards and other provisions in this article are not substantively changed, no new compliance date is proposed. 9VAC5-40, Article 39 will be repealed at an appropriate time after the new Article 7 standards are effective.

## 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 primary advantage to the public is that the adoption of these regulations will significantly decrease emissions of VOCs in the Northern Virginia and Fredericksburg areas, thus benefiting public health and welfare. There are no disadvantages to the public.

2. Regulated Community: The primary advantage to the regulated community is that the new regulations are clearer and have fewer reporting requirements than some of the regulations they replace. The primary disadvantages are that there may be fewer days that certain products may be applied, and there may be a need for worker training for some users to learn how to apply some of the compliant products correctly.

3. Department: The primary advantages to the department are that the adoption of these regulations will allow Virginia (1) to attain and maintain air quality standards and improve public health of Virginians, and (2) to uphold its promise to its jurisdictional neighbors (Maryland and Washington, D.C.) to all take similar regulatory action in order to minimize regulatory differences across the affected borders. The primary disadvantage to the department is increased compliance cost to administer the new regulations.

**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
9VAC5-20-21	Documents incorporated by reference.	Made miscellaneous corrections.	Necessary to facilitate locating the referenced documents.
9VAC5-45-50 I	Standard for volatile organic compounds. Describes the public availability and handling requirements for information submitted to the board.	Rephrased to be more general about what information must be made available to the public.	Necessary to clarify the requirement and to prevent misinterpretation.
9VAC5-45, Article 1	Title. Includes applicability date of January 1, 2009 in the title.	*Revised the title to match the revised applicability date in the article.	Necessary for consistency with applicability requirements.
9VAC5-45-60 A	Applicability. Specifies which products are subject to regulation based upon an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article.	Necessary to avoid applying other requirements to products retroactively.
9VAC5-45-80 A and B	Definitions. Specifies which meanings and terms apply.	Made miscellaneous corrections.	Necessary to be consistent with wording used in other regulations.
9VAC5-45-80 C	Terms defined: "Portable fuel container."	Revised a term referring to advertising to be consistent with wording in other articles.	Necessary to be consistent with wording used in other regulations.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC5-45-80 C	Terms defined: "Product category."	Deleted term from list of definitions.	Necessary because the term is not used in this article.
9VAC5-45-90 E	Standard for volatile organic compounds. Specifies sell-through requirements based upon an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article. Rephrased the sell-through requirement.	Necessary to adjust sell-through to match the applicability dates and clarify what sell-through is allowed.
9VAC5-45-100	Administrative requirements. Specifies labeling requirements.	Made miscellaneous corrections.	Necessary to prevent misinterpretation of terms and references.
9VAC5-45, Article 2	Title. Includes applicability date of January 1, 2009 in the title.	*Revised the title to match the revised applicability date in the article.	Necessary for consistency with applicability requirements.
9VAC5-45-160 A	Applicability. Specifies which products are subject to regulation based upon an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article.	Necessary to avoid applying requirements to products retroactively.
9VAC5-45-180 A and B	Definitions. Specifies which meanings and terms apply.	Made miscellaneous corrections.	Necessary to be consistent with wording used in other regulations.
9VAC5-45-180 C	Terms defined. Specifies the meanings for terms used in the article.	Made miscellaneous corrections.	Necessary to correct capitalization or correct the position of terms alphabetically.
9VAC5-45-190 A and B	Standard for volatile organic compounds. Specifies standards based upon an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article.	Necessary for consistency with applicability requirements.
9VAC5-45-200 A	Certification procedures. Specifies the certification process for products based upon an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article.	Necessary for consistency with applicability requirements.
9VAC5-45-200 B 1 l (2)	Specifies that products using new materials not previously certified through an executive order (CARB) must apply for a recertification.	Revised to allow products using new materials previously certified by the board to avoid a recertification just because of that change.	Necessary to avoid unnecessary delays and costs associated with recertification by the board.
9VAC5-45-200 B 1 o	Describes the public availability and handling requirements for information submitted to the board for certification.	Rephrased to be more general about what information must be made available to the public.	Necessary to clarify the requirement and to prevent misinterpretation.
9VAC5-45-200 C 1 c	Specifies the timeframes allowed for review of certification applications.	Revised to allow the board additional time to reach a decision if additional information is needed.	Necessary to avoid unnecessary disapprovals due to insufficient information.
9VAC5-	Describes the public	Rephrased to be more general	Necessary to clarify the

Section number	Requirement at proposed stage	What has changed	Rationale for change
45-210 2	availability and handling requirements for information submitted to the board in innovative product applications.	about what information must be made available to the public and what the requirements are.	requirement and to prevent misinterpretation.
9VAC5-45-210 4	Specifies the timeframes allowed for review of innovative product applications and allows the board and owner to mutually agree to extend the review period.	Revised to specify that the board may extend the review period if additional time is needed.	Necessary to avoid unnecessary disapprovals due to insufficient time or information.
9VAC5-45-200 8	Specifies conditions under which an innovative product exemption may be modified or revoked.	Deleted all language concerning the process that must be used to modify or revoke the exemption.	Necessary to avoid redundancy and potential conflicts as regulatory procedures change.
9VAC5-45-220	Administrative requirements. Specifies labeling requirements.	Made miscellaneous corrections.	Necessary to prevent misinterpretation of terms and references.
9VAC5-45-240	Compliance schedules. Specifies the latest compliance date as January 1, 2009.	*Revised the compliance date to a date after the effective date of the article.	Necessary for consistency with applicability requirements.
9VAC5-45, Article 3	Title. Includes applicability date of January 1, 2009 in the title.	*Revised the title to match the revised applicability date in the article.	Necessary for consistency with applicability requirements.
9VAC5-45-280	Applicability. Specifies which products are subject to regulation based upon an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article.	Necessary to avoid applying other requirements to products retroactively.
9VAC5-45-290 K	Exemptions. Specifies conditions under which a waiver from the standards may be requested, reviewed and approved.	Deleted unnecessary language and language concerning the process that must be used to modify or revoke the waiver.	Necessary to avoid redundancy and potential conflicts as regulatory procedures change.
9VAC5-45-300 A and B	Definitions. Specifies which meanings and terms apply.	Made miscellaneous corrections.	Necessary to be consistent with wording used in other regulations.
9VAC5-45-300 C	Terms defined. Specifies the meanings for terms used in the article.	Made miscellaneous corrections.	Necessary to correct grammar, references, or punctuation.
9VAC5-45-310 D	Standard for volatile organic compounds. Specifies sell-through requirements based upon an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article. Rephrased the sell-through requirement.	Necessary to adjust sell-through to match the applicability dates and clarify what sell-through is allowed.
9VAC5-45-310 F 4	Standard for volatile organic compounds. Specifies standards for charcoal lighter materials certifications.	Deleted language concerning the process that must be used to modify or revoke the certification.	Necessary to avoid redundancy and potential conflicts as regulatory procedures change.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC5-45-320	Alternative compliance plan (ACP). Specifies procedures for applications, and review and approval of ACPs.	Made miscellaneous corrections.	Necessary to correct punctuation, references, and grammar.
9VAC5-45-320 C 1 c	Specifies procedures for applications, and review and approval of ACPs.	Revised the application review timeframe requirements to allow the board additional time to reach a decision if additional information is needed.	Necessary to avoid unnecessary disapprovals due to insufficient information.
9VAC5-45-320 F 3 d	Specifies procedures for creating and trading ACP surplus reduction credits.	Replaced "shall not" with "may not."	Necessary to strengthen prohibitions.
9VAC5-45-320 I	Specifies procedures for modifying ACPs.	Deleted language concerning the process that must be used to modify an ACP.	Necessary to avoid redundancy and potential conflicts as regulatory procedures change.
9VAC5-45-330 A 3	Specifies application procedures for obtaining an innovative product exemption.	Rephrased to be more general about what information must be made available to the public.	Necessary to clarify the requirement and to prevent misinterpretation.
9VAC5-45-330 A 5	Specifies review timeframes for innovative product exemption applications.	Revised to specify that the board may extend the review period if additional time is needed.	Necessary to avoid unnecessary disapprovals due to insufficient time or information.
9VAC5-45-330 A 9	Specifies conditions under which an innovative product exemption may be modified or revoked.	Deleted all language concerning the process that must be used to modify or revoke the exemption.	Necessary to avoid redundancy and potential conflicts as regulatory procedures change.
9VAC5-45-340	Administrative requirements. Specifies labeling requirements for products.	Made miscellaneous corrections.	Necessary to correct punctuation.
9VAC5-45-370	Test methods and procedures. Specifies methods for determining compliance.	Made miscellaneous corrections.	Necessary to correct grammar and improve clarity.
9VAC5-45-390	Notification, records and reporting. Specifies recordkeeping and reporting requirements.	Made miscellaneous corrections	Necessary to correct punctuation and grammar.
9VAC5-45-390 D	Describes the public availability and handling requirements for information reported to the board.	Rephrased to be more general about what information must be made available to the public and what the requirements are.	Necessary to clarify the requirement and to prevent misinterpretation.
9VAC5-45-390 E 4	Specifies length of time record must be kept by owner.	*Revised from 5 years to 3 years.	Necessary for consistency with other recordkeeping requirements.
9VAC5-45, Article 4	Title. Includes applicability date of January 1, 2009 in the title.	*Revised the title to match the revised applicability date in the article.	Necessary for consistency with applicability requirements.



Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC5-45-400 A	Applicability. Specifies which products are subject to regulation based upon an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article.	Necessary to avoid applying requirements to products retroactively.
9VAC5-45-410 K 6	Exemptions. Specifies conditions under which a waiver from the standards may be requested, reviewed and approved.	Deleted language concerning the process that must be used to modify or revoke the waiver.	Necessary to avoid potential conflicts as regulatory procedures change.
9VAC5-45-420 A and B	Definitions. Specifies which meanings and terms apply.	Made miscellaneous corrections.	Necessary to be consistent with wording used in other regulations.
9VAC5-45-420 C	Terms defined. Specifies meanings for terms used in the article.	Made miscellaneous corrections.	Necessary to correct punctuation, references and grammar, to reposition definitions alphabetically and to improve clarity.
9VAC5-45-420 C	Terms defined: "ACP emissions" is defined in terms of equations.	Revised to correct the position of the equation for calculating VOC content of charcoal lighter material products.	Necessary in order to correctly calculate ACP emissions.
9VAC5-45-430 A	Standard for volatile organic compounds. Specifies standards for products and owners.	Made miscellaneous corrections.	Necessary to correct punctuation and grammar, and to improve clarity.
9VAC5-45-430 A	Standard for volatile organic compounds. Specifies standards based upon an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article.	Necessary for consistency with applicability requirements.
9VAC5-45-430 D	Specifies the effective date for standards applicable to federally regulated FIFRA products.	*Revised the applicability date to a date more than a year after the effective date of the article.	Necessary for consistency with applicability requirements and a long federal approval process for product changes.
9VAC5-45-430 E	Specifies standards for certifications for charcoal lighter materials in terms of an applicability date of January 1, 2009.	*Revised the applicability date to a date after the effective date of the article. Deleted language concerning the process that must be used to modify or revoke the certification.	Necessary to avoid redundancy and potential conflicts as regulatory procedures change.
9VAC5-45-430 F	Specifies standards for aerosol adhesives in terms of an applicability date of January 1, 2009.	*Revised the applicability dates to a date after the effective date of the article. Deleted language concerning the process that must be used to modify or revoke the certification.	Necessary to avoid redundancy and potential conflicts as regulatory procedures change.
9VAC5-45-440	Alternative compliance plan (ACP). Specifies procedures for	Made miscellaneous corrections.	Necessary to correct punctuation, references, and grammar.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	applications, and review and approval of ACPs.		
9VAC5-45-440 C 1 c	Specifies procedures for applications, and review and approval of ACPs.	Revised the application review timeframe requirements to allow the board additional time to reach a decision if additional information is needed.	Necessary to avoid unnecessary disapprovals due to insufficient information.
9VAC5-45-440 F 3 d	Specifies procedures for creating and trading ACP surplus reduction credits.	Replaced "shall not" with "may not."	Necessary to strengthen prohibitions.
9VAC5-45-440 I	Specifies procedures for modifying ACPs.	Deleted language concerning the process that must be used to modify an ACP.	Necessary to avoid redundancy and potential conflicts as regulatory procedures change.
9VAC5-45-440 K	Describes the public availability and handling requirements for ACP information reported to the board.	Rephrased to be more general about what information must be made available to the public and what the requirements are.	Necessary to clarify the requirement and to prevent misinterpretation.
9VAC5-45-450 A 3	Describes application process and the public availability and handling requirements for innovative product exemption information reported to the board.	Rephrased to be more general about what information must be made available to the public and what the requirements are.	Necessary to clarify the requirement and to prevent misinterpretation.
9VAC5-45-450 A 5	Specifies the timeframes allowed for review of innovative product applications and allows the board and owner to mutually agree to extend the review period.	Revised to specify that the board may extend the review period if additional time is needed.	Necessary to avoid unnecessary disapprovals due to insufficient time or information.
9VAC5-45-450 A 9	Specifies conditions under which an innovative product exemption may be modified or revoked.	Deleted all language concerning the process that must be used to modify or revoke the exemption.	Necessary to avoid redundancy and potential conflicts as regulatory procedures change.
9VAC5-45-460	Administrative requirements. Specifies labeling requirements for products.	Made miscellaneous corrections.	Necessary to correct punctuation.
9VAC5-45-460 C	Specifies provisions for the most restrictive limit that applies to a product in terms of a January 1, 2009 applicability date for most consumer products, and a January 1, 2010 applicability date for FIFRA products	*Revised the applicability date for most products to a date after the effective date of the article. *Revised the applicability date for FIFRA products to a date more than a year after the effective date of the article.	Necessary for consistency with applicability requirements and a long federal approval process for FIFRA product changes.
9VAC5-45-480	Compliance schedule. Specifies a compliance date based on an	*Revised the compliance date to a date after the effective date of the article.	Necessary for consistency with applicability requirements.

Section number	Requirement at proposed stage	What has changed	Rationale for change
	applicability date of January 1, 2009.		
9VAC5-45-510	Notification, records and reporting. Specifies recordkeeping and reporting requirements.	Made miscellaneous corrections	Necessary to correct punctuation and grammar.
9VAC5-45-510 D	Describes the public availability and handling requirements for information reported to the board.	Rephrased to be more general about what information must be made available to the public and what the requirements are.	Necessary to clarify the requirement and to prevent misinterpretation.
9VAC5-45-510 E 4	Specifies length of time that records must be kept by owner.	*Revised from 5 years to 3 years.	Necessary for consistency with other recordkeeping requirements.
9VAC5-45-540	Definitions. Specifies which meanings and terms apply.	Made miscellaneous corrections.	Necessary to be consistent with wording or format used in other regulations; to correct punctuation, references, grammar, or typographical errors; and to improve clarity.
9VAC5-45-610 D	Notification, records and reporting. Specifies length of time that records must be kept by owner.	*Revised from 5 years to 3 years.	Necessary for consistency with other recordkeeping requirements.
9VAC5-45-640 A and B	Definitions. Specifies which meanings and terms apply.	Made miscellaneous corrections.	Necessary to be consistent with wording used in other regulations.
9VAC5-45-640 C	Terms defined. Specifies meanings for terms used in the article.	Made miscellaneous corrections.	Necessary to be consistent with format used in other regulations, to correct typographical errors, and to improve clarity.
9VAC5-45-640 C	Terms defined. Specifies meanings for terms used in the article.	Added new definition of "ozone season."	Necessary to improve clarity, consistent with other changes to this article.
9VAC5-45-650 B and G	Standards for VOC. Prohibits the use of noncompliant adhesives and sealants after the compliance date.	*Revised the prohibition to add a phase-in period for single-ply roof membrane adhesives and sealants. During the phase-in period, compliance with the standards for those products is only required during the ozone season.	Necessary to provide for time to develop compliant adhesives and sealants for use in cold weather.
9VAC5-45-650 A and H	Prohibits the manufacture, distribution and sale of noncompliant adhesives and sealants after the compliance date.	*Revised the prohibition to allow manufacture, distribution, sale of noncompliant single-ply roof membrane adhesives and sealants until the phase-in period for the use of those products is completed.	Necessary to provide noncompliant product for use during the phase-in period.

Section number	Requirement at proposed stage	What has changed	Rationale for change
9VAC5-45-700	Compliance schedule. Specifies a compliance date based on an applicability date of January 1, 2009.	*Revised the compliance date to a date after the effective date of the article.	Necessary for consistency with applicability requirements.
9VAC5-45-710	Test methods and procedures. Specifies methods for determining compliance.	Made miscellaneous corrections.	Necessary to be consistent with format used in other regulations and to correct punctuation and references.
9VAC5-45-730 G	Notification, records and reporting. Specifies length of time that records must be kept by owner.	*Revised from 5 years to 3 years.	Necessary for consistency with other recordkeeping requirements.
9VAC5-45-770	Definitions. Specifies which meanings and terms apply.	Made miscellaneous corrections.	Necessary to be consistent with wording or format used in other regulations and to correct punctuation.

**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, is attached.

**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
Chapter 20, Section 21.	N/A.	Documents incorporated by reference. Contains a list of documents previously incorporated into the regulations.	Adds new certification and test procedures to support the new regulatory requirements. Necessary so that the regulated community can find the procedures that they need to demonstrate compliance requirements.
None.	10	None.	Applicability. Specifies special provisions are generally applicable to products and owners subject to standards or other provisions in each article. It also excludes some provisions of Chapters 20 and 40 from

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>applicability unless specified as applicable in the individual articles. Necessary so that owners can identify which provisions of the regulations other than those in each article are applicable to them.</p>
None.	20	None.	<p>Compliance. Specifies that owners and products must comply with certain state and federal provisions for testing, monitoring, reporting and recordkeeping, minimizing emissions and must comply with provisions of applicable articles or be in violation. Necessary so that owners know where to look in order to comply with testing, monitoring and other compliance provisions of the chapter.</p>
None.	30	None.	<p>Emission testing. Specifies how emissions testing must be conducted and reported, when it is required, what alternatives are permissible and what testing facilities must be provided by the owner. Necessary so that owners know explicitly what testing responsibilities they have.</p>
None.	40	None.	<p>Monitoring. Specifies how emissions monitoring must be conducted and reported, when it is required, what alternatives are permissible and what monitoring must be provided by the owner. Necessary so that owners know explicitly what monitoring responsibilities they have.</p>
None.	50	None.	<p>Notification, records and reporting. Specifies certain minimal notifications, reports, and recordkeeping requirements that are generally applicable to owners. Necessary so that owners know explicitly what recordkeeping and reporting responsibilities they have.</p>
None.	9VAC5-45, Part II	None.	<p>Emission Standards. New part added to set emission standards for individual consumer and commercial product types.</p>
None.	Article 1	None.	<p>Emission Standards for Fuel Containers and Spouts Manufactured before [a date that corresponds to the first day of the fifth month after the month of the effective date]. New article added for products manufactured before the applicability date for Article 2.</p>
None.	60	None.	<p>Applicability. Specifies that portable fuel container products manufactured before the applicability date for Article 2, and owners that manufacture, distribute and sell such products within the Northern Virginia and</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>Fredericksburg VOC Emissions Control Areas, are subject to the provisions of Article 1.</p> <p>Necessary so that owners know if they are subject to the provisions of this regulation and are able to identify which of their products and operations might be subject to standards under this article.</p>
None.	70	None.	<p>Exemptions. Specifies certain portable fuel container products, characteristics, uses and areas that are exempt from the provisions of Article 1.</p> <p>Necessary so that owners can figure out which of their products and operations are subject to standards under this article, and which are not.</p>
None.	80	None.	<p>Definitions. Defines and describes portable fuel container product types, product characteristics, persons, operations, authorities, documents and other terms necessary to administer the provisions of Article 1.</p> <p>Necessary so that owners can identify with certainty those products, persons and operations that are subject to standards and other provisions of the article.</p>
None.	90	None.	<p>Standard for volatile organic compounds. Lists the portable fuel container product categories and the design and performance standards applicable to those products manufactured before the applicability date for Article 2. Also prohibits the manufacture, distribution and sale of noncompliant products and provides criteria for sell-through of products manufactured earlier than the applicability date for Article 2.</p> <p>Necessary so that owners know which design and performance criteria must be met so that only compliant products are manufactured, distributed within the Northern Virginia area, and offered for sale there.</p>
None.	100	None.	<p>Administrative requirements. Specifies product labeling requirements for portable fuel container products manufactured earlier than the applicability date for Article 2.</p> <p>Necessary so that Department personnel can easily determine which products are subject to standards under Article 1 and which of those that are subject, are compliant.</p>
None.	110	None.	<p>Compliance. Specifies which of the special provisions in Part I of 9VAC5-45, and which</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>other regulations not specified in Part I as generally applicable, apply to persons and products subject to Article 1.                      Necessary so that owners can easily identify which other provisions of the regulations outside of Article 1 apply to their products and operations.</p>
None.	120	None.	<p>Compliance schedules. Specifies the dates by which all portable fuel container products and operations subject to Article 1 must comply with the design and performance standards. These compliance dates are not changed from the compliance dates required under 9VAC5-40, Article 42 for portable fuel containers. Also contains waiver requirements.                      Necessary so that owners know when the design and performance standards and other requirements are effective for their products in the areas specified.</p>
None.	130	None.	<p>Test methods and procedures. Specifies the test methods that must be used to determine compliance with the standards. Also allows certain alternative methods to be used for testing if approved by the board.                      Necessary so that owners can find the proper test methods and use them to demonstrate whether their products are compliant or not.</p>
None.	140	None.	<p>Monitoring. Specifies that the special monitoring provisions of 9VAC5-45, Part I do not apply to portable fuel containers subject to this article.                      Necessary so that owners don't try to apply general monitoring requirements that are not appropriate for this product type.</p>
None.	150	None.	<p>Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of 9VAC5-45, Part I apply and which do not.                      Necessary so that owners apply only those general recordkeeping and reporting requirements that are appropriate for this product type.</p>
None.	Article 2	None.	<p>Emission Standards for Fuel Containers and Spouts Manufactured on or after [a date that corresponds to the first day of the fifth month after the month of the effective date]. New article added for products manufactured on or after the applicability date for Article 2.</p>
None.	160	None.	<p>Applicability. Specifies that portable fuel container products manufactured on and</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>after the applicability date for Article 2, and owners that manufacture, distribute and sell such products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas, are subject to the provisions of Article 2.</p> <p>Necessary so that owners know if they are subject to the provisions of this regulation and are able to identify which of their products and operations might be subject to standards under this article.</p>
None.	170	None.	<p>Exemptions. Specifies certain portable fuel container products, characteristics, uses and areas that are exempt from the provisions of Article 2.</p> <p>Necessary so that owners can figure out which of their products and operations are subject to standards under this article, and which are not.</p>
None.	180	None.	<p>Definitions. Defines and describes portable fuel container product types, product characteristics, persons, operations, authorities, documents and other terms necessary to administer the provisions of Article 2.</p> <p>Necessary so that owners can identify with certainty those products, persons and operations that are subject to standards and other provisions of the article.</p>
None.	190	None.	<p>Standard for volatile organic compounds. Lists the portable fuel container product categories and the labeling, design and performance standards applicable to those products manufactured on and after the applicability date for Article 2. Also prohibits the manufacture, distribution and sale of noncompliant products.</p> <p>Necessary so that owners know which design and performance criteria must be met so that only compliant products are manufactured, distributed within the Northern Virginia area, and offered for sale there.</p>
None.	200	None.	<p>Certification procedures. Specifies the application requirements, review requirements and approval procedures necessary to administer the certification program for portable fuel container products manufactured on and after the applicability date for Article 2. Also specifies how CARB-approved products may become board approved with little additional work.</p>



Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			Necessary so that owners know how to get their compliant products certified by the board.
None.	210	None.	Innovative products. Specifies a procedure and application requirements for exempting certain innovative products from the operation and design standards applicable to other portable fuel container products. Necessary so that technology-based designs that will achieve equivalent emissions reductions may be manufactured, distributed and sold.
None.	220	None.	Administrative requirements. Specifies product labeling requirements for portable fuel container products manufactured on and after the applicability date for Article 2. Necessary so that Department personnel can easily determine which products are subject to standards under Article 2 and which of those that are subject to the standards, are compliant.
None.	230	None.	Compliance. Specifies which of the special provisions in Part I of 9VAC5-45, and which other regulations not specified in Part I as generally applicable, apply to persons and products subject to Article 2. Necessary so that owners can easily identify which other provisions of the regulations outside of Article 2 apply to their products and operations.
None.	240	None.	Compliance schedules. Specifies that all portable fuel container products and operations subject to Article 2 must comply with the certification, labeling, design and performance standards on and after the applicability date for Article 2. Also contains waiver requirements in case there are some owners that cannot comply by the deadlines specified. Necessary so that owners know when the design and performance standards are effective for their products and operations.
None.	250	None.	Test methods and procedures. Specifies the new test methods that must be used to determine compliance with the standards. Also allows certain alternative methods to be used for testing if approved by the board. Necessary so that owners can find the proper test methods and use them to demonstrate whether their products are compliant or not.
None.	260	None.	Monitoring. Specifies that the special

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>monitoring provisions of 9VAC5-45, Part I do not apply to portable fuel containers subject to this article.                      Necessary so that owners don't try to apply general monitoring requirements that are not appropriate for this product type.</p>
None.	270	None.	<p>Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of 9VAC5-45, Part I apply and which do not.                      Necessary so that owners apply only those general recordkeeping and reporting requirements that are appropriate for this product type.</p>
None.	Article 3	None.	<p>Emission Standards for Consumer Products Manufactured before [a date that corresponds to the first day of the fifth month after the month of the effective date]. New article added for products manufactured before the applicability date for Article 4.</p>
None.	280	None.	<p>Applicability. Specifies that consumer products manufactured before the applicability date for Article 4, and owners that manufacture, distribute and sell such products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas, are subject to the provisions of Article 3.                      Necessary so that owners know if they are subject to the provisions of this regulation and are able to identify which of their products and operations might be subject to standards under this article.</p>
None.	290	None.	<p>Exemptions. Specifies certain consumer products, characteristics, uses and areas that are exempt from the provisions of Article 3. Also contains waiver requirements.                      Necessary so that owners can figure out which of their products and operations are subject to standards under this article, and which are not.</p>
None.	300	None.	<p>Definitions. Defines and describes consumer product types, product characteristics, persons, operations, authorities, documents and other terms necessary to administer the provisions of Article 3.                      Necessary so that owners can identify with certainty those products, persons and operations that are subject to standards and other provisions of the article.</p>
None.	310	None.	<p>Standard for volatile organic compounds.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>Lists the consumer product categories and the VOC content standards applicable to those products manufactured before the applicability date for Article 4. Also prohibits the manufacture, distribution and sale of noncompliant products and provides criteria for sell-through of products manufactured earlier than the applicability date for Article 4. Necessary so that owners know which VOC content criteria must be met so that only compliant products are manufactured, distributed within the Northern Virginia area, and offered for sale there.</p>
None.	320	None.	<p>Alternative control plan (ACP) for consumer products. Specifies application and review procedures for an alternate compliance procedure for manufacturers. Allows manufacturers to average their VOC emissions from compliant products with VOC content below the standard and VOC emissions from noncompliant products with VOC content above the standard, based upon sales.</p> <p>Necessary to provide owners with the needed operating flexibility so that certain products without compliant alternatives can continue to be manufactured and sold, while protecting the overall emissions reductions required by the article.</p>
None.	330	None.	<p>Innovative products. Specifies the application and review procedures for another alternate compliance procedure for manufacturers. Manufacturers can substitute design standards with equivalent VOC emissions for the applicable VOC content standards.</p> <p>Necessary to provide owners with the needed operating flexibility so that certain products without compliant alternatives can continue to be manufactured and sold, while protecting the overall emissions reductions required by the article.</p>
None.	340	None.	<p>Administrative requirements. Specifies special aerosol and date-of-manufacture product labeling requirements for consumer products manufactured earlier than the applicability date for Article 4.</p> <p>Necessary so that Department personnel can easily determine which products are subject to standards under Article 3 so that compliance of those products can be determined.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
None.	350	None.	<p>Compliance. Specifies which of the special provisions in Part I of 9VAC5-45, and which other regulations not specified in Part I as generally applicable, apply to persons and products subject to Article 3.</p> <p>Necessary so that owners can easily identify which other provisions of the regulations outside of Article 3 apply to their products and operations.</p>
None.	360	None.	<p>Compliance schedules. Specifies the dates by which consumer products that are subject to Article 3 must comply with the VOC standards and other requirements. These compliance dates are not changed from the compliance dates required under 9VAC5-40, Article 50 for consumer products.</p> <p>Necessary so that owners know when the VOC standards and other requirements are effective for their products in the areas specified.</p>
None.	370	None.	<p>Test methods and procedures. Specifies the test methods that must be used to determine compliance with the standards.</p> <p>Necessary so that owners can find the proper test methods and use them to demonstrate whether their products are compliant or not.</p>
None.	380	None.	<p>Monitoring. Specifies that the special monitoring provisions of 9VAC5-45, Part I apply to consumer products subject to this article.</p> <p>Necessary so that owners know to apply the general monitoring requirements to this product type.</p>
None.	390	None.	<p>Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of 9VAC5-45, Part I apply and which do not. Also requires reporting of product information upon request of the board.</p> <p>Necessary so that owners know they are responsible to provide product information and sales information for compliance purposes when asked.</p>
None.	Article 4	None.	<p>Emission Standards for Consumer Products Manufactured on or after [a date that corresponds to the first day of the fifth month after the month of the effective date]. New article added for products manufactured on or after the applicability date for Article 4.</p>
None.	400	None.	<p>Applicability. Specifies that consumer products manufactured on or after the</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>applicability date for Article 4, and owners that manufacture, distribute and sell such products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas, are subject to the provisions of Article 4.</p> <p>Necessary so that owners know if they are subject to the provisions of this regulation and are able to identify which of their products and operations might be subject to standards under this article.</p>
None.	410	None.	<p>Exemptions. Specifies certain consumer products, characteristics, uses and areas that are exempt from the provisions of Article 4. Also contains waiver requirements in case there are some owners that cannot comply with the standards by the deadlines specified.</p> <p>Necessary so that owners can figure out which of their products and operations are subject to standards under this article, and which are not.</p>
None.	420	None.	<p>Definitions. Defines and describes consumer product types, product characteristics, persons, operations, authorities, documents and other terms necessary to administer the provisions of Article 4.</p> <p>Necessary so that owners can identify with certainty those products, persons and operations that are subject to standards and other provisions of the article.</p>
None.	430	None.	<p>Standard for volatile organic compounds. Lists the consumer product categories and the VOC content standards applicable to those products manufactured on and after the applicability date for Article 4. Also prohibits the manufacture, distribution and sale of noncompliant products.</p> <p>Necessary so that owners know which VOC content criteria must be met so that only compliant products are manufactured, distributed within the Northern Virginia area, and offered for sale there.</p>
None.	440	None.	<p>Alternative control plan (ACP) for consumer products. Specifies application and review procedures for an alternate compliance procedure for manufacturers. Allows manufacturers to average their VOC emissions from compliant products with VOC content below the standard and VOC emissions from noncompliant products with</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>VOC content above the standard, based upon sales.</p> <p>Necessary to provide owners with the needed operating flexibility so that certain products without compliant alternatives can continue to be manufactured and sold, while protecting the overall emissions reductions required by the article.</p>
None.	450	None.	<p>Innovative products. Specifies the application and review procedures for another alternate compliance procedure for manufacturers. Manufacturers can substitute design standards with equivalent VOC emissions for the applicable VOC content standards. Necessary to provide owners with the needed operating flexibility so that certain products without compliant alternatives can continue to be manufactured and sold, while protecting the overall emissions reductions required by the article.</p>
None.	460	None.	<p>Administrative requirements. Specifies date-of-manufacture product labeling requirements for consumer products manufactured on and later than the applicability date for Article 4. Also contains additional labeling requirements for several product categories. Necessary so that Department personnel can easily determine which products are subject to standards under Article 4 so that compliance of those products can be determined.</p>
None.	470	None.	<p>Compliance. Specifies which of the special provisions in Part I of 9VAC5-45, and which other regulations not specified in Part I as generally applicable, apply to persons and products subject to Article 4. Necessary so that owners can easily identify which other provisions of the regulations outside of Article 4 apply to their products and operations.</p>
None.	480	None.	<p>Compliance schedules. Specifies that those consumer products subject to the provisions of Article 4 must comply with the VOC content standards and other requirements no later than the compliance date for Article 4. Necessary so that owners know when the design and performance standards are effective for their products and operations.</p>
None.	490	None.	<p>Test methods and procedures. Specifies the test methods that must be used to determine</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>compliance with the standards. Necessary so that owners can find the proper test methods and use them to demonstrate whether their products are compliant or not.</p>
None.	500	None.	<p>Monitoring. Specifies that the special monitoring provisions of 9VAC5-45, Part I apply to consumer products subject to this article. Necessary so that owners know to apply the general monitoring requirements to this product type.</p>
None.	510	None.	<p>Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of 9VAC5-45, Part I apply and which do not. Also requires reporting of product information upon request of the board. Necessary so that owners know they are responsible to provide product information and sales information for compliance purposes when asked.</p>
None.	Article 5	None.	<p>Emission Standards for Architectural and Industrial Maintenance Coatings. New article that sets standards for certain architectural coating products.</p>
None.	520	None.	<p>Applicability. Specifies that architectural coating products, and owners that manufacture, distribute, sell and apply such products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas, are subject to the provisions of Article 5. Necessary so that owners know if they are subject to the provisions of this regulation and are able to identify which of their coating products and operations might be subject to standards under this article.</p>
None.	530	None.	<p>Exemptions. Specifies certain architectural coating products, package sizes and areas that are exempt from the provisions of Article 5. Necessary so that owners can figure out which of their coating products and operations are subject to standards under this article, and which are not.</p>
None.	540	None.	<p>Definitions. Defines and describes architectural coating product types, product characteristics, persons, operations, authorities, documents and other terms necessary to administer the provisions of Article 5.</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			Necessary so that owners can identify with certainty those products, persons and operations that are subject to standards and other provisions of the article.
None.	550	None.	Standard for volatile organic compounds. Lists the architectural coating product categories and the VOC content standards applicable to those products, with default VOC standards for those categories not listed. Also prohibits the manufacture, distribution, sale and application of noncompliant coating products. Necessary so that owners know which VOC content criteria must be met so that only compliant coating products are manufactured, distributed within the Northern Virginia area, offered for sale and used there.
None.	560	None.	Administrative requirements. Specifies that each architectural coating product must be labeled with the date of manufacture, any applicable thinning recommendations, and the coating VOC content. Certain descriptive statements must be included for several of the coating product categories. Necessary so that Department personnel can easily determine which coating products are subject to standards under Article 5 so that compliance of those products can be determined.
None.	570	None.	Compliance. Specifies which of the special provisions in Part I of 9VAC5-45, and which other regulations not specified in Part I as generally applicable, apply to owners and architectural coating products. Necessary so that owners can easily identify which other provisions of the regulations outside of Article 4 apply to their coating products and operations.
None.	580	None.	Compliance schedules. Specifies the dates by which architectural coating products must comply with the VOC standards and other requirements. These compliance dates are not changed from the compliance dates required under 9VAC5-40, Article 49 for Architectural and Industrial Maintenance Coating products. Necessary so that owners know when the VOC standards and other requirements are effective for their coating products within the areas specified.
None.	590	None.	Test methods and procedures. Specifies the



Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>test methods that must be used to determine compliance with the standards. Necessary so that owners can find the proper test methods and use them to demonstrate whether their products are compliant or not.</p>
None.	600	None.	<p>Monitoring. Specifies that the special monitoring provisions of 9VAC5-45, Part I apply to architectural coating products subject to this article. Necessary so that owners know to apply the general monitoring requirements to this product type.</p>
None.	610	None.	<p>Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of 9VAC5-45, Part I apply to architectural coating products and which do not. Necessary so that owners apply only those general recordkeeping and reporting requirements that are appropriate for this product type.</p>
None.	Article 6	None.	<p>Emission Standards for Adhesives and Sealants. New article that sets standards for adhesives and sealant products.</p>
None.	620	None.	<p>Applicability. Specifies that owners that manufacture, distribute, sell, apply and solicit the use of adhesive and sealant products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas are subject to the provisions of Article 6. Necessary so that owners know if they are subject to the provisions of this regulation and are able to identify which of their operations might be subject to standards under this article.</p>
None.	630	None.	<p>Exemptions. Specifies that certain adhesive and sealant products, uses, package sizes, VOC content levels, and low usage operations are exempt from the provisions of Article 6. Allows the sale of non-compliant products to consumers that use add-on control technology to meet emissions limits. Also provides that adhesive and sealants that are subject to VOC standards under other regulations are exempt. Necessary so that owners can figure out which of their adhesive and sealant products and operations are subject to standards under this article, and which are not.</p>
None.	640	None.	<p>Definitions. Defines and describes adhesive</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>and sealant product types, product characteristics, persons, operations, authorities, documents and other terms necessary to administer the provisions of Article 6.</p> <p>Necessary so that owners can identify with certainty those products, persons and operations that are subject to standards and other provisions of the article.</p>
None.	650	None.	<p>Standard for volatile organic compounds. Lists the adhesive and sealant product categories and the VOC content standards applicable to those product categories. Also specifies surface preparation, cleanup and waste requirements and prohibits the manufacture, distribution, sale, application and solicitation for the use of noncompliant products and any noncompliant uses for adhesives and sealants (such as improper storage of waste). Also provides a phase-in period for standards that apply to single-ply roofing membrane adhesive and sealant products.</p> <p>Necessary so that owners know which VOC content criteria must be met and what the performance standards are for uses of adhesive and sealant products, so that only compliant coating products are manufactured, distributed within the Northern Virginia area, offered for sale and used properly there.</p>
None.	660	None.	<p>Control technology guidelines. Specifies that efficient add-on control technology may be used by consumers and contractors on site to control VOC emissions from adhesive and sealant products that would otherwise be considered noncompliant. Specifies the necessary efficiency requirements and performance and monitoring requirements for the add-on control technology.</p> <p>Necessary to allow consumers to have the operational flexibility to use noncompliant products under circumstances that achieve the required emissions reductions by other means.</p>
None.	670	None.	<p>Standard for visible emissions. Applies the existing source visible emissions standard of 9VAC5-40 to adhesive and sealant operations that are subject to 9VAC5-45, Article 6.</p> <p>Necessary so that owners do not conduct</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			any adhesive and sealant operations in such a manner so as to produce unnecessary visible emissions.
None.	680	None.	Administrative requirements. Specifies that each adhesive and sealant product must be labeled with any applicable thinning recommendations, the coating VOC content as supplied, and the VOC content as applied. Necessary so that Department personnel can easily determine whether each adhesive and sealant product is compliant.
None.	690	None.	Compliance. Specifies that the special compliance provisions in Part I of 9VAC5-45 apply to owners and their adhesive and sealant products. Necessary so that owners know where to look in order to comply with general compliance provisions of 9VAC5-45.
None.	700	None.	Compliance schedules. Specifies that those adhesives and sealant products subject to the provisions of Article 6 must comply with the VOC content standards and other requirements no later than the same dates used for the applicability dates and compliance dates for Articles 2 and 4. Necessary so that owners know when the VOC content and applicable performance standards are effective for their products and operations.
None.	710	None.	Test methods and procedures. Specifies that the testing special provisions of 9VAC5-45, Part I and the listed test methods must be used to determine compliance with the standards. Necessary so that owners can find the proper test methods and use them to demonstrate whether their products and operations are compliant or not.
None.	720	None.	Monitoring. Specifies that the special monitoring provisions of 9VAC5-45, Part I apply to consumer products subject to this article. Necessary so that owners know to apply the general monitoring requirements to this product type.
None.	730	None.	Notification, records and reporting. Specifies that the recordkeeping and reporting special provisions of 9VAC5-45, Part I apply and requires that records of certain information on the adhesive and sealant products, operations and add-on control technologies

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			<p>must be kept for three years and made available to the board upon request. Necessary so that owners know they are responsible to keep records on products and controls and to provide that information as necessary to demonstrate their compliance with the standards and requirements of the article or their exemption status.</p>
None.	740	None.	<p>Registration. Requires that owners that use add-on control technology to comply with the requirements of the article to register with the board. Necessary so that the board is aware of who must keep and provide compliance records for add-on control technologies, so that the board can confirm that noncompliant products may be sold to them.</p>
None.	750	None.	<p>Facility and control equipment maintenance and malfunction. Requires that regulatory maintenance and malfunction requirements apply. Necessary because improper use, poor maintenance or malfunction of add-on control technology will result in excess emissions. Required because the special provisions of 9VAC5-45, Part I specified that the maintenance and malfunction provisions of Chapter 20 did not apply unless otherwise stated in the Article.</p>
None.	Article 7	None.	<p>Emission Standards for Asphalt Paving Operations. A new article that sets standards for asphalt paving operations.</p>
None.	760	None.	<p>Applicability. Specifies that owners that conduct any of the operations normally associated with asphalt paving (mixing, storing or applying liquefied asphalt) within the Northern Virginia and Fredericksburg VOC Emissions Control Areas, are subject to the provisions of Article 7. Necessary so that owners know whether or not they are subject to the provisions of this regulation and are able to identify which of their operations might be subject to standards under this article.</p>
None.	770	None.	<p>Definitions. Defines and describes certain asphalt paving product types, product characteristics, and paving operations necessary to administer the provisions of Article 7. Necessary so that owners can identify with certainty those products, persons and</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			operations that are subject to standards and other provisions of the article.
None.	780	None.	Standard for volatile organic compounds. Prohibits the use of any liquefied asphalt product for paving operations unless the product is an emulsified asphalt product, but permits the use of cutback asphalt outside of the ozone season and for certain other uses. Also specifies that the regulation is not intended to apply to the mixing and use of asphaltic concrete. Some averaging of VOC contents is permitted. Necessary so that owners know when the mixing, storage and use of cutback asphalt is prohibited and when it is permitted within the Northern Virginia area.
None.	790	None.	Standard for visible emissions. Applies the existing source visible emissions standard of 9VAC5-40 to paving operations. Necessary so that owners do not conduct any paving operations in such a manner so as to produce unnecessary visible emissions.
None.	800	None.	Standard for fugitive dust/emissions. Applies the existing source fugitive dust and emissions standard to paving operations. Necessary so that owners do not conduct any paving operations in such a manner so as to produce unnecessary fugitive dust or emissions.
None.	810	None.	Standard for odor. Applies the existing source odor standard to paving operations. Necessary so that owners do not conduct any paving operations in such a manner to produce odorous emissions that might reasonably be avoided.
None.	820	None.	Compliance. Specifies that the special provisions in Part I of 9VAC5-45 apply to owners that conduct paving operations. Necessary so that owners know that the special compliance provisions apply where applicable.
None.	830	None.	Test methods and procedures. Specifies that the special provisions in Part I of 9VAC5-45 apply to owners that conduct paving operations. Necessary so that owners know that the special testing provisions apply where applicable.
None.	840	None.	Monitoring. Specifies that the special monitoring provisions of 9VAC5-45, Part I do not apply to owners that conduct paving

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
			operations. Necessary so that owners know not to apply the general monitoring requirements to this product type.
None.	850	None.	Notification, records and reporting. Specifies that the special provisions in Part I of 9VAC5-45 apply to owners that conduct paving operations. Necessary so that owners know that the special recordkeeping and reporting provisions apply where applicable.

**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.*

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

1. Less stringent compliance requirements will compromise the effectiveness of the standards. Sales reporting requirements for architectural coating products subject to 9VAC5-45, Article 5 may be removed without compromising the effectiveness of the applicable standards. Sales reporting requirements for products containing perchlorethylene and methylene chloride that are subject to 9VAC5-45, Articles 3, 4 and 5 (concerning consumer products and architectural and maintenance coatings) may be changed to a less stringent 3-year recordkeeping requirement without compromising the effectiveness of the applicable standards. Compliance records for adhesives and sealants subject to 9VAC5-45, Article 6 may be changed to a less stringent 3-year recordkeeping requirement without compromising the effectiveness of the applicable standards. Compromising effectiveness of the standards will compromise public health, safety, environmental and economic welfare.

2. Delay of the compliance date or a less stringent compliance schedule (such as a phased-in compliance schedule) would be reasonable for a standard applicable to an individual product category without compromising the effectiveness of the article if there is no existing product that will meet the standard, a reasonable time period is proposed for development and testing of a compliant product and the emissions reduction contribution of that individual product category is likely to be insignificant. Single-ply roof membrane adhesive and sealants is the only product for which such an argument has been made. In all other cases, delays or less stringent compliance schedules for individual product category standards will compromise public health, safety, environmental and economic welfare. Delay of the compliance

schedules for individual articles will compromise public health, safety, environmental and economic welfare.

3. Consolidation of compliance or reporting requirements beyond those in paragraph 1 will compromise health, safety, environmental, and economic welfare.

4. Substitution of performance standards for operational or design standards in this proposal will compromise public health, safety, environmental, and economic welfare.

5. Since small businesses make up the majority of facilities subject to the proposals, exemption of small businesses as a class from any or all parts of the regulations will compromise public health, safety, environmental, and economic welfare. An exemption might be adopted for an individual product category that affects small business if there is no existing product that will meet the proposed standard and the contribution of that individual product category to the required emissions reductions can be demonstrated to be insignificant.

**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 these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

**Supplemental Information**

<p><b>a. Description of the individuals, businesses or other entities likely to be affected by the regulation.</b></p>	<p>The Virginia entities most likely to be affected by this rulemaking are the manufacturers who produce consumer products, portable fuel containers, and adhesives and sealants. Retailers in Northern Virginia and Fredericksburg may be affected. Users of adhesives and sealants in Northern Virginia and Fredericksburg may also be affected.</p>
<p><b>b. Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The number of entities in Northern Virginia and Fredericksburg likely to be affected by this rulemaking is as follows:</p> <ol style="list-style-type: none"> <li>1. Portable Fuel Containers: No small businesses are likely to be affected.</li> <li>2. Consumer Products: 476 manufacturers, distributors or retailers may be affected.</li> <li>3. Architectural and Industrial Coatings: 1 manufacturer may be affected.</li> <li>4. Adhesives and Sealants: 2500 manufacturers</li> </ol>

	<p>and contractors may be affected.                      5. Asphalt Paving: 78 contractors may be minimally affected.                      (Data from Virginia Employment Commission database analysis dated April 21, 2008.) Most, if not all, of the affected facilities are likely to be small businesses.</p>
<p><b>c. Projected cost of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b></p>	<p>The following costs are projected for all regulated entities in the Northern Virginia and Fredericksburg VOC Emissions Control Areas for implementation and compliance and include projected reporting, recordkeeping and other administrative costs.</p> <ol style="list-style-type: none"> <li>1. Portable Fuel Containers: Insignificant cost to Virginia small businesses or individuals.</li> <li>2. Consumer Products: \$720,000 per year cost is likely to be passed on to consumers (compared with a \$6,500,000 per year cost previously reported).</li> <li>3. Architectural and Industrial Coatings: \$3,200 savings annually per reporting facility.</li> <li>4. Adhesives and Sealants: \$1,200,000 per year cost shared between manufacturers, distributors, and contractors.</li> <li>5. Asphalt Paving: No cost or savings to Virginia small businesses.</li> </ol>
<p><b>d. Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>It is not expected that the regulation will result in any cost to the Department beyond that currently in the budget. The sources of Department funds to carry out this regulation are the general fund and the federal trust (grant money provided by the U.S. Environmental Protection Agency under Section 105 of the federal Clean Air Act or permit fees charged to affected entities under the permit program). The activities are budgeted under the Air Quality Stationary Source Compliance Inspections program (5122100). The costs are expected to be ongoing.</p>
<p><b>e. Projected cost of the regulation on localities.</b></p>	<p>The projected cost of the regulation on localities is not expected to be beyond that of other affected entities and are addressed in item c above.</p>
<p><b>f. Beneficial impact the regulation is designed to produce.</b></p>	<p>The adoption of this regulation will decrease emissions of VOC in the Northern Virginia and Fredericksburg areas by an estimated total of 2.1 tons per day (compared with an estimated 8.3 tons per day of VOC emissions reductions previously reported). This significant emissions reduction will benefit public health and welfare. It will also allow Virginia to avoid federal sanctions that would be imposed for violating the SIP provisions of the Clean Air Act and to uphold its promise to its jurisdictional neighbors (Maryland and Washington, D.C.) to take this action.</p>



**COMMONWEALTH OF VIRGINIA  
STATE AIR POLLUTION CONTROL BOARD  
SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR  
REGULATION REVISION D06  
CONCERNING**

**CONSUMER AND COMMERCIAL PRODUCTS  
(9VAC5 CHAPTER 45)**

**INTRODUCTION**

At the October, 2008 meeting, the Board authorized the Department to promulgate for public comment a proposed regulation revision concerning consumer and commercial products.

A public hearing was advertised accordingly and held in the DEQ Northern Virginia Regional Office on July 22, 2009 and the public comment period closed on August 10, 2009. 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 consumer and commercial products. A summary of the amendments follows:

The proposed regulatory action adds a new chapter (9VAC5-45) specifically for regulations pertaining to consumer and commercial products and is applicable to specific product types and the owners that are involved in the manufacture, distribution, retail sales and in some cases, the marketing and use of those products. In Part I of the new chapter, special provisions specify the general testing, monitoring, compliance, notification, recordkeeping and reporting requirements that are applicable to all articles in the new chapter and specify certain other sections of the regulations that are not generally applicable. Exceptions to the special provisions are addressed in each individual article of the new chapter.

In Part II of the new Chapter 45:

1. The proposed regulatory action establishes standards for portable fuel containers for products manufactured before and after January 1, 2009 as new Articles 1 and 2 in Chapter 45, respectively, and applies to all of the products subject to the current provisions of Article 42 of 9VAC5-40, Emission Standards for Portable Fuel Container Spillage. Article 1 clarifies some Article 42 exemptions and definitions, adds another exemption category, removes obsolete standards and their associated administrative requirements, and provides criteria for sell-through of products. Because Article 1 applies to all products manufactured before January 1, 2009 and is designed to replace Article 42, the compliance schedule proposed for Article 1 is the same as that in Article 42. Article 2 applies to all portable fuel container products manufactured on or after January 1, 2009 and requires board pre-certification of new portable fuel container products as compliant with new labeling requirements and with new and more stringent design and performance standards. Article 2 also includes applicability to a new category of owner, and adds (i) new and revised exemptions, (ii) new certification procedures, (iii) new testing standards, and (iv) alternative compliance provisions for innovative products over those provisions now applicable under Article 42. The new Article 2 specifies a compliance deadline no later than January 1, 2009. Article 42 will be repealed at an appropriate time after the standards in the new Articles 1 and 2 are effective.

2. The proposed regulatory action establishes standards for consumer products manufactured before and after January 1, 2009 as a new Articles 3 and 4 in Chapter 45, respectively and applies to all of the products subject to the current provisions of Article 50 of 9VAC5-40, Emission Standards for Consumer Products. Article 3 pertains to consumer products manufactured before January 1, 2009, clarifies some definitions and standards, makes the alternative control plan (ACP) procedures more flexible, revises labeling, reporting and other administrative requirements, and clarifies sell-through criteria. Because Article 3 applies to all products manufactured before January 1, 2009 and is designed to replace Article 50, the compliance schedule proposed for Article 3 is the same as Article 50. Article 4 applies to all consumer products manufactured after January 1, 2009 and includes all of the changes made in Article 3, adds more definitions and standards for some new product categories and establishes new labeling and other administrative requirements. Article 4 specifies a compliance deadline no later than January 1, 2009. Article 50 will be repealed at an appropriate time after the standards in the new Articles 3 and 4 are effective.

3. The proposed regulatory action establishes standards for architectural and industrial maintenance coatings and incorporates all of the provisions of Article 49 of 9VAC5-40, Emission Standards for Architectural and Industrial Maintenance Coatings into a new Article 5 in Chapter 45, except that the new Article 5 removes some obsolete reporting requirements and changes the remaining one to a recordkeeping requirement. Because the standards and other provisions of the new Article 5 are not substantively changed from what is in Article 49, no new compliance dates are proposed. Article 49 will be repealed at an appropriate time after the new Article 5 standards are effective.

4. The proposed regulatory action will add a new regulation, Article 6 in the new chapter 45, that establishes new emission standards for adhesives and sealants. The provisions of this article apply to owners who sell, supply, offer for sale or manufacture for sale commercial adhesives, sealants, adhesive primers or sealant primers that contain volatile organic compounds within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The provisions will also apply to owners that use, apply for compensation or solicit the use or application of such products in those areas. Exempted from the regulation is any such product manufactured in the Northern Virginia or Fredericksburg VOC Emissions Control Areas for shipment and use outside of these areas. The provisions of this regulation will not apply to a manufacturer or distributor who sells, supplies, or offers for sale such products that do not comply with the VOC standards as long as the manufacturer or distributor can demonstrate both that the product is intended for shipment and use outside of those areas and that the manufacturer or distributor has taken reasonable precautions to assure that the product is not distributed in those areas. A number of product-specific exemptions are also allowed. VOC content limits are specified for different product categories. Control technology guidelines are offered as an alternate means of achieving compliance with the standards. Test methods, registration requirements and recordkeeping procedures are provided. This article specifies a compliance deadline of January 1, 2009.

5. The proposed regulatory action establishes standards for asphalt paving operations and incorporates all of the provisions of Article 39 of 9VAC5-40, Emission Standards for Asphalt Paving Operations as a new Article 7 in Chapter 45. Applicability provisions in Article 7 apply to owners instead of sources and a new definition of paving operations is added that clarifies the types of operations to which the provisions of the regulation apply. Since the standards and other provisions in this article are not substantively changed, no new compliance date is proposed. Article 39 will be repealed at an appropriate time after the new Article 7 is effective.

### **SUMMARY OF PUBLIC PARTICIPATION PROCESS**

A public hearing was held at the DEQ Northern Virginia Regional Office in Woodbridge, Virginia on July 22, 2009. Four members of the general public attended the hearing, with two of those offering oral or written testimony. One additional set of written comments was received during the public comment period from one of the public hearing speakers. As required by law, notice of this hearing was given to the public on or about June 8, 2009 in the Virginia Register and in two major newspapers on the Northern Virginia Air Quality Control Region (the Washington Times and the Fredericksburg Free-Lance Star). 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:** Uniform regulation provisions.

**COMMENTER:** Joe Yost, Consumer Specialty Products Association (CSPA).

**TEXT:** CSPA strongly believes in the importance of promulgating uniform regulations for consumer products throughout the Ozone Transport Region (OTR). Thus, CSPA is on record as supporting the recently revised OTC Model Rule because it promotes uniform state regulations in broad regions of the country. The Department's new VOC limits are consistent with standards established by regulations adopted by other states in the Mid-Atlantic and Northeast Region. The fact that these VOC limits are consistent throughout the OTR makes these challenging new regulatory standards workable. Therefore, CSPA offers general support for the Department's proposed amendment.

**RESPONSE:** The Department appreciates the CSPA's support of the proposed revisions to the consumer products regulations. No changes have been made to the proposed regulation based upon this comment.

2. **SUBJECT:** Inappropriate effective dates.

**COMMENTER:** Joe Yost, CSPA.

**TEXT:** As a threshold matter, the proposed January 1, 2009, effective date established by Articles 3 and 4 would create impermissible "after the fact" regulatory requirements. CSPA strongly urges the Department to establish an effective date no earlier than January 1, 2010, for the VOC limits and related enforcement provisions in Articles 3 and 4.

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

3. **SUBJECT:** Inappropriate effective dates.

**COMMENTER:** Joe Yost, CSPA.

**TEXT:** The Department should also revise Articles 3 and 4 to maintain the additional 1-year deferral of the standards applicable to all FIFRA-regulated products. Any changes required for FIFRA-related products will also require federal approval which takes about a year. CSPA supports an effective date no earlier than January 1, 2011, for all FIFRA-regulated products.

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

4. SUBJECT: Enforcement overlap between consumer products regulations.

COMMENTER: Joe Yost, CSPA.

TEXT: CSPA supports the Department's provision (9VAC5-45-310 D) in Article 3 for dealing with products manufactured before the effective date for the VOC limits. This provision is consistent with the parallel provision in the OTC Model Rule and other states' regulations. In addition, this provision ensures efficient enforcement of this regulation and does not impose unnecessary administrative burdens on the Commonwealth's retailers.

RESPONSE: The Department appreciates the CSPA's support of the proposed revisions to the consumer products regulations. No changes have been made to the proposed regulation based upon this comment.

5. SUBJECT: Availability of ACP information to the public.

COMMENTER: Joe Yost, CSPA.

TEXT: The Department states that the proposed revisions to the current alternative control plan (ACP) provision make the current regulatory provision more flexible. CSPA agrees with this assessment and supports the proposed revisions to the ACP. However, CSPA has serious concerns about the proposed revisions to the manner in which the Department handles information submitted to meet the requirements of the ACP provision. Specifically, CSPA has serious concerns that, as currently drafted, proposed 9VAC5-45-320 K and 9VAC5-45-440 K would impose a burden of proof on manufacturers to make "...a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C..." before the information will be treated as confidential. CSPA believes that this proposed revision imposes a substantial and unnecessary burden of proof on companies seeking approval of an ACP agreement.

RESPONSE: The proposed language more closely meets the requirements of 9VAC5-170-60 in that such records must be made available to the public unless the owner makes an adequate demonstration that the information is confidential. Merely stating that the information is a trade secret and requesting that it be withheld from the public as confidential is insufficient to meet the requirements of law and regulation. The Department has procedures in place to protect such information until an owner either makes, or fails to make, an adequate demonstration. Virginia law and regulation requires that the information be made available to the public and places the burden on the owner to make the demonstration that it should be withheld instead.

No changes have been made to the proposed regulation based upon this comment.

6. SUBJECT: Consumer products five-year record retention requirement.

COMMENTER: Joe Yost, CSPA.

TEXT: CSPA has concerns about the length of time that the Department will require companies to maintain records. The proposal will require companies maintain records for five calendar years. CSPA respectfully recommends that Department revise this administrative requirement since it is inconsistent with common industry practices, and recordkeeping provisions in EPA's National Consumer Product Rule, California's Consumer Products Regulation, the OTC Model Rule and several other states' regulations, which only require companies to maintain records for three years. However, to be fair, several states impose a five-year record-retention period. But, since EPA, CARB and a majority of states with OTC-based regulations impose a three-year recordkeeping requirement, CSPA recommends that the Department follow this approach.

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

7. SUBJECT: Single-ply roofing adhesive and sealants standards.

COMMENTER: Phil Abraham, Vectre Corp. representing Jared Blum, EPDM Roofing Association.

TEXT: The proposal should be modified to allow a two-year phase-in period for the standards for single-ply roofing adhesives, sealants and adhesive primers in Table 45-6A so that the standards only apply from May 1, 2010 to September 30, 2010, from May 1, 2011 to September 30, 2011, and on and after January 1, 2012.

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

8. SUBJECT: Single-ply roofing adhesive and sealants standards.

COMMENTER: Phil Abraham, Vectre Corp. representing Jared Blum of the EPDM Roofing Association

TEXT: The proposal should be modified to allow manufacturing, distribution and sale of high-VOC single-ply roofing adhesives, sealants, and sealant primers year-round during the phase-in period (until January 1, 2012). Since the necessary lead-time for manufacturing, distribution and stocking sufficient high-VOC product for use during the fall, winter and spring months of the phase-in period is long, a prohibition on the manufacture, distribution and sale of these products during the summer months would cause unnecessary construction delays in the fall, winter and spring months. The new standards should not apply to the manufacture, distribution and sale of single-ply roofing products until January 1, 2012.

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