



## Exempt Action Proposed Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	Primary action: 9VAC5 Chapter 221, Variance for Atlantic Research Corporation Gainesville Facility
<b>Regulation title</b>	Variance for Rocket Motor Test Operations at Atlantic Research Corporation Gainesville Facility
<b>Action title</b>	Repeal of Variance for Atlantic Research Corporation Gainesville Facility (Revision L11)
<b>Document preparation date</b>	December 9, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

On September 30, 2002, the board issued a variance (9VAC5 Chapter 221) to the Atlantic Research Corporation (ARC) rocket test facility. Due to the nature of the testing operations, ARC had no appropriate method by which it could demonstrate compliance with the board's opacity standards. The board therefore granted a variance for the testing facility that enabled ARC to demonstrate compliance through meeting a particulate matter standard as an alternative to the opacity standard. Because the facility was shut down in March 2007, the variance is no longer required. In order for the state regulations to be administratively correct, 9VAC5-221 must now be repealed.

The department is requesting approval of this proposal for public comment that meets state statutory and regulatory requirements. Under §2.2-4016, a regulation may be repealed after its effective date only in accordance with the provisions of the Administrative Process Act that governed its adoption. Approval of the proposal will ensure that the board's regulations are up to date and accurate.

### Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The purpose of the ARC variance was to provide an alternative means of compliance. The standards for particulate matter with which ARC needed to comply required the company to certify compliance through a determination made using EPA's "Method for the Visual Determination of the Opacity of Emissions from Stationary Sources" (40 CFR Part 60, Appendix A, Method 9) or an alternate method. Method 9, however, was inappropriate because most of ARC's tests lasted less than the 6-minute minimum specified for the opacity readings that demonstrate a source's compliance with the standards. Thus, DEQ's inspectors could not observe the source's normal performance for the required duration of the test. For its rocket motor test operations, therefore, ARC had no appropriate method by which it could demonstrate compliance with the board's opacity standards, although it was legally obligated to do so. The variance issued by the board specified that (i) the standard for visible emissions in 9VAC5-50/40-80 shall not apply to the rocket motor test operations at the facility, and that (ii) the particulate matter emissions from those operations shall be limited to 714 pounds per hour. The variance is no longer necessary as the facility shut down in March 2007. Repeal of the variance will ensure that the board's regulations are up to date and accurate.

## Public Participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the potential impacts of the regulation on the regulated community and the impacts of the regulation on farm or forest land preservation.*

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In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and impacts of the regulation on farm or forest land preservation. Also, the Department is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the close of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

All comments requested by this document must be submitted to the agency contact: Mary Major, Environmental Program Manager, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov), fax 804-698-4510).

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

### 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.*

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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.

The repeal of 9VAC5 Chapter 221 affects only one facility, Atlantic Research Corporation at Gainesville, which is no longer in operation. The regulation providing the variance for the facility to operate needs to be repealed to ensure that no confusion exists within the board's regulations. Maintaining the board's regulations and ensuring they are current and up to date will provide continued effectiveness of those regulations and will ensure protection of the health and welfare of the public.

### Family impact

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

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It is not anticipated that this regulation will have a direct impact on families.

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