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## Periodic Review Report of Findings

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC5-80, Permits For Stationary Sources: Part I, Permit Actions Before the Board, and Part II, Permit Procedures: Article 4, Insignificant Activities Article 5, State Operating Permits Article 6, Permits for New and Modified Stationary Sources
<b>Regulation title</b>	Regulations for the Control and Abatement of Air Pollution
<b>Date this document prepared</b>	October 1, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

## Acronyms and Definitions

*Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

CFR- Code of Federal Regulations  
EPA- Environmental Protection Agency  
NAAQS- National Ambient Air Quality Standards  
NO<sub>x</sub>- Nitrogen Oxides  
PSD- Prevention of Significant Deterioration  
SIP- State Implementation Plan  
VOCs- Volatile Organic Compounds

## Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

#### Federal Requirements for Part I

Section 165 of the federal Clean Air Act (CAA) requires preconstruction review and permitting of major emitting facilities to prevent significant deterioration of the ambient air quality. Public hearings are required as part of the permit approval process.

Sections 173 and 182 of the CAA require states to develop, submit and implement plans to limit emissions in areas designated as nonattainment for national ambient air quality standards so that attainment is achieved according to a schedule determined by the CAA. Plans must include preconstruction review and permitting of new and modified major stationary sources, emission standards that meet the lowest achievable emission rates in practice for the particular source category, preconstruction offsets, reasonably available control technology for existing sources in certain areas, contingency measures, and special emission reduction programs as necessary to achieve and maintain reasonable further progress toward attainment.

Title V (§ 501 et seq.) of the CAA requires states to develop and submit for EPA approval, a permit program containing specified elements, permit requirements, and permit conditions to control emissions of regulated air pollutants from affected sources subject to Title IV of the CAA, all major sources, sources subject to standards under §§ 111 or 112 of the CAA, or sources required to have a permit under Parts C or D of Title I of the Clean Air Act. The program must include procedures for public notice, including offering an opportunity for public comment and a public hearing.

40 CFR Part 70 provides for the establishment of comprehensive state Title V air quality permitting systems, and defines minimum elements that the permit programs shall contain. Other than requiring that all sources subject to the regulation have a permit that assures compliance with all applicable standards and requirements and requiring the collection of fees to support the program, the program does not impose substantive new requirements.

Section 70.7 under 40 CFR Part 70 requires that all permit proceedings except for minor permit modifications shall have procedures for public notice including an opportunity for public comment and a public hearing.

40 CFR Part 72 provides for the establishment of an operating permit program for affected sources pursuant to the acid rain provisions of Title IV of the CAA. The requirements of this part supplement and modify the requirements of 40 CFR Part 70 as they apply to affected sources under the Acid Rain Program.

Subpart G (Acid Rain Phase II Implementation) of 40 CFR 72 sets forth the criteria with which the acid rain operating permit program must comply to issue Phase II Acid Rain permits consistent with the provisions of part 70 (Title V) permit program.

Section 72.72 under Subpart G of 40 CFR Part 72 requires that notice of the issuance of a draft Acid Rain permit be provided to the public including the opportunity for public comment and opportunity to request a public hearing.

#### Federal Requirements for Part II, Articles 5 and 6

Section 110(a) of the CAA mandates that each state adopt and submit to the U. S. Environmental Protection Agency (EPA) a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary National Ambient Air Quality Standard (NAAQS) within each air quality control region in the state. The plan shall include provisions to accomplish, among other tasks, the following:

1. Establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
2. Establish schedules for compliance;
3. Prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and
4. Require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 50 specifies the NAAQS: sulfur dioxide, particulate matter, carbon monoxide, ozone (its precursors are nitrogen oxides and volatile organic compounds), nitrogen dioxide, and lead.

Federal Requirements for Part I, and Part II, Articles 5 and 6

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those from Subparts F and I summarized below.

Subpart F (Procedural Requirements) of 40 CFR Part 51 specifies definitions of key terms, stipulations and format for plan submission, requirements for public hearings, and conditions for plan revisions and federal approval.

Federal Requirements for Part I, and Part II, Article 6

Section 51.102 under Subpart F specifies that states must provide to the public notice, an opportunity for public comment, and either a public hearing or the opportunity to request a public hearing prior to the adoption of such plans, revisions to the plans, or compliance schedules by which sources are required to be in compliance with such plans.

Federal Requirements for Part I, and Part II, Articles 5 and 6

Subpart G (Control Strategy) of 40 CFR Part 51 specifies the description of emissions reductions estimates sufficient to attain and maintain the standards, the description of control measures and schedules for implementation, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Federal Requirements for Part I, and Part II, Article 6

Subpart I (Review of New Sources and Modifications) of 40 CFR Part 51 requires plans to provide legally enforceable procedures, requirements for public availability of information, definitions and permit requirements, emission limitations, public participation requirements.

Section 51.160 of Subpart I specifies that the plan must stipulate legally enforceable procedures that enable the permitting agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in either a violation of any part of a control strategy or interference with attainment or maintenance of a national standard and, if such violation or interference would occur, the means by which the construction or modification can be prevented. The procedures must identify types and sizes of facilities, buildings, structures or installations which will be subject to review and discuss the basis for determining which facilities will be subject to review. The procedures must provide that owners of facilities, buildings, structures or installations must submit information on the nature and amounts of emissions and on the location, construction and operation of the facility. The procedures must ensure that owners comply with applicable control strategies after

permit approval. The procedures must discuss air quality data and modeling requirements on which applications must be based.

Section 51.161 under Subpart I specifies that plans must include procedures for ensuring the public availability of information submitted by source owners and operators, the agency's analysis of the impact of the new or modified source construction or modification on ambient air quality, and the agency's proposal for approval or disapproval of the permit.

Section 51.162 of Subpart I specifies that the responsible agency must be identified in the plan.

Section 51.163 of Subpart I specifies that the plan must include administrative procedures to be followed in determining whether the construction or modification of a facility, building, structure or installation will violate applicable control strategies or interfere with the attainment or maintenance of a national standard.

Section 51.166 under Subpart I specifies that plans must contain emission limitations sufficient to prevent significant deterioration of air quality and requires that action under this paragraph be subject to the opportunity for a public hearing.

#### Federal Requirements for Part II, Articles 5 and 6

Subpart K (Source Surveillance) of 40 CFR Part 51 specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) of 40 CFR Part 51 specifies identification of legal authority to implement plans. Section 51.230 of Subpart L specifies that each SIP must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

1. Adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
2. Enforce applicable laws, regulations, and standards, and seek injunctive relief;
3. Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;
4. Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
5. Prevent construction, modification, or operation of a facility which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;
6. Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and
7. Make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 of Subpart L requires the identification of legal authority as follows:

1. The provisions of law or regulation which the state determines provide the authorities required under § 51.231 must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

2. The plan must show that the legal authorities specified in Subpart L are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) of 40 CFR Part 51 specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

As an alternative to traditional administrative means (regulations, orders, and new source permits), EPA has recognized the use of state operating permits for the purpose of making Clean Air Act requirements federally enforceable. This has been done through the promulgation of a final rule (54 FR 27274, June 28, 1989) which addresses the approval of state operating permit programs into SIPs. The final rule also specifies the criteria that must be met by a state operating permit program in order to be approved into a SIP.

#### Federal Requirements – For Part II, Article 4

Title V of the CAA requires the states to develop operating permit programs to cover all stationary sources defined as major by the CAA. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. The federal regulations under 40 CFR Part 70 specify the minimum Title V elements that must be included in state operating permit programs.

Section 502(a) of the CAA and 40 CFR 70.3(a) require that the following sources be covered under the provisions of any Title V program:

1. Affected sources as defined under the acid deposition provisions of Title IV of the CAA.
2. Major sources, defined as follows:
  - a. any source of air pollutants with the potential to emit 100 tons per year (tpy) or more of any pollutant;
  - b. in ozone nonattainment areas designated as serious, any source emitting 50 tpy or more of volatile organic compounds (VOCs) or nitrogen oxides (NO<sub>x</sub>); for severe or extreme nonattainment areas, sources emitting 25 and 10 tpy or more of VOCs or NO<sub>x</sub>; and
  - c. any source with the potential to emit 10 tpy of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants regulated under § 112 of the CAA.
3. Any other source, including an area source, subject to a hazardous air pollutant standard under § 112 of the CAA.
4. Any source subject to new source performance standards under § 111 of the CAA.
5. Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration program under Title I, Part C of the CAA or the nonattainment area new source review program under Title I, Part D of the CAA.
6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

Section 502(b) of the CAA and 40 CFR 70.4(b) and other provisions of 40 CFR Part 70, as noted, set out the minimum elements that must be included in each program, as follows:

1. Requirements for permit applications, including standard application forms, compliance plans and criteria for determining the completeness of applications (40 CFR 70.5).
2. Monitoring and reporting requirements (40 CFR 70.6(a)(3)).
3. A permit fee system (40 CFR 70.9).
4. Provisions for adequate personnel and funding to administer the program.
5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the CAA (40 CFR 70.7(a)(1)).
6. Authority to issue permits for a fixed term, not to exceed five years (40 CFR 70.6(a)(2)).
7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan (40 CFR 70.6(a)(1)).
8. Authority to terminate, modify, or revoke and reissue permits for cause and a requirement to reopen permits in certain circumstances (40 CFR 70.7).
9. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than \$10,000 per day, and appropriate criminal penalties (40 CFR 70.11).
10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion (40 CFR 70.8(c) and (e)).
11. Procedures for expeditiously determining when applications are complete, processing applications, public notice, expeditious review of permit actions, and state court review of the final permit action (40 CFR 70.5 (a)(2) and 70.7 (h)).
12. Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the CAA shall be treated as a final permit action solely to allow judicial review by the applicant or anyone also who participated in the public comment process to compel action on the application.
13. Authority and procedures to make available to the public any permit application, compliance plan, permit emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of § 114(c) of the CAA; the contents of the permit itself are not entitled to confidentiality protection.
14. Provisions to allow operational flexibility at the permitted facility.

Section 503(b) of the CAA and 40 CFR 70.5(c) (8) and (9) require that applicants submit with the permit application a compliance plan describing how the source will comply with all applicable requirements of the CAA. The compliance plan must include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every six months. The permittee must also certify that the facility is in compliance with any applicable requirements of the permit no less frequently than annually. The permittee must also promptly report any deviations from permit requirements to the permitting authority.

Section 503(d) of the CAA and 40 CFR 70.7(b) specify that a source's failure to have an operating permit shall not be a violation of the CAA if the source owner submitted a timely and complete application for a permit and if he submitted other information required or requested to process the application in a timely fashion.

Section 503(e) of the CAA and 40 CFR 70.4(b)(3)(viii) require that a copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. Any information that is required of an applicant to submit and which is entitled to protection from disclosure under § 114 (c) of the CAA can be submitted separately.

Section 504 of the CAA and 40 CFR 70.6(a)-(c) specify what is to be included in each operating permit issued under this program. These provisions require each permit to include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements, including the requirements of any state implementation plan.

Section 504(b) of the CAA indicates that the EPA administrator may prescribe, by rule, procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated by the CAA. Continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.

Section 504(c) of the CAA and 40 CFR 70.6(a)(3) require that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under § 504(b) and to any other requirements specified in federal regulation. Any report required to be submitted by a permit issued to a corporation shall be signed by a responsible corporate official, who shall certify its accuracy.

Section 504(d) of the CAA and 40 CFR 70.6(d) allow the state permitting authority to issue a general permit covering numerous similar sources after notice and opportunity for public hearing. Any general permit shall comply with all program requirements. Any source governed by a general permit regulation must still file an application under this program.

Section 504(e) of the CAA and 40 CFR 70.6(e) allow the state permitting authority to issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the CAA at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under the CAA. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location.

Section 504(f) of the CAA and 40 CFR 70.6(f) provide a permit shield for permittees. This section specifies that compliance with a permit issued in accordance with Title V shall be deemed in compliance with § 502, or with the program. Unless otherwise provided by the EPA administrator and by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the CAA that relate to the permittee, if the permit includes the applicable requirements of those provisions, or if the permitting authority makes a determination relating to the permittee that such other provisions are not applicable and the permit includes the determination or a concise summary.

Section 503(c) of the CAA and 40 CFR 70.5(a)(1) specify that all sources required to be permitted under a Title V program are required to submit an application within 12 months after the date EPA approves the state's program. The state permitting authority may specify an earlier date for submitting applications. The state permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval, and must act on at least one-third of the permits each year over a period not to exceed three years after approval of the program. After acting on the initial application, the permitting authority must issue or deny a complete application within 18 months after receiving that application.

Section 505(a) of the CAA and 40 CFR 70.8(a) require the state permitting authority to send EPA a copy of each permit application and each permit proposed to be issued. For each permit application or proposed permit sent to EPA § 505(a) and 40 CFR 70.8(b) also require the permitting authority to notify all states whose air quality may be affected and that are contiguous to the state in which the emission originates, or that are within 50 miles of the source. This notice must provide an opportunity for these affected states to submit written recommendations respecting the issuance of the permit and its terms and conditions. § 505(b) and 40 CFR 70.8(c) provide for EPA objections to any permit which contains provisions that are not in compliance with the requirements of the CAA or with the applicable implementation plan. This section also provides that any person may petition the EPA administrator within 60 days after the expiration of the 45-day review period, if no objections were submitted by the EPA administrator. Furthermore, the state permitting authority may not issue the permit if the EPA administrator objects to its issuance unless the permit is revised to meet the objection. If the state permitting authority fails to revise and resubmit the permit, EPA must issue or deny the permit in accordance with the requirements of Title V. Under § 505(d) of the CAA and 40 CFR 70.8(a)(2), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. Section 505(e) of the CAA and 40 CFR 70.7(g) allow the EPA administrator to terminate, modify, or revoke and reissue an operating permit issued under a state's program.

#### State Requirements

Code of Virginia § 10.1-1300 defines pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Excess emissions of regulated air pollutants from permitted new and modified sources subject to the Title V permit program are harmful to human health and can significantly interfere with the people's enjoyment of life and property.

Code of Virginia § 10.1-1307 A provides that the board may, among other activities, develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth.

Code of Virginia § 10.1-1308 provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act.

#### Additional State Requirements for Part I

Code of Virginia § 10.1-1322 A provides the department with the authority to issue, amend, revoke or terminate permits to control air pollutant emissions pursuant to regulations adopted by the board.

Code of Virginia § 10.1-1322.01 provides procedures for public hearings and requests for public hearings concerning proposed permit actions before the board. It provides that the board take final action on permits brought before the board and allows for additional opportunity for public comment and board review of permitting actions.

#### Additional State Requirement for Part II, Article 6

Code of Virginia § 10.1-1322.4 provides an exemption (unless required by the federal government law or regulation) from permit requirements for the use of an alternative fuel or raw material, if the owner demonstrates to the board that, as a result of trial burns at the facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. The Code further provides (to the extent allowed by federal law or regulation) that no demonstration shall be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.



## Alternatives

*Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

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Alternatives to the proposal have been considered by the department. The department has determined that the retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements and the purpose of the regulation. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives considered, are discussed below.

1. Retain the regulation without amendment. This option is being selected because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state and federal mandates, and associated regulations and policies. This option was not selected because it could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to public health and welfare.
3. Repeal the regulation or amend it to satisfy the provisions of legally binding state and federal mandates. This option was not selected because the regulation is effective in meeting its goals and already satisfies those mandates.

## Public Comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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An informal advisory group was not formed for purposes of this periodic review. No comments were received during the public comment period.

## Effectiveness

*Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

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This regulation enhances the Department's ability to ensure compliance with all applicable federal requirements under the CAA and specific requirements under the state code through the issuance and enforcement of federal and state operating permits to construct and operate a new or modified facility and issuance and enforcement of federal and state operating permits.

The regulation is necessary for the protection of public health and welfare, as it is needed to meet the following goals:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. To provide an administrative mechanism to impose source-specific regulatory requirements with the flexibility to address the individual needs of sources.

3. To provide a mechanism to administer certain air quality control program requirements without the need for federal oversight.

For Part II, Article 6:

4. To provide an alternative to the more stringent new source review requirements that would be applicable to major stationary sources locating in prevention of significant deterioration areas and nonattainment areas through the promulgation of federally enforceable permit emission limits.

For Part I:

The public review procedures are intended to provide adequate public oversight of the permitting process to ensure that owners comply with air pollution emission limits and control technology requirements in order to control levels of emissions being emitted into the ambient air, and prohibit emissions that would endanger health, contribute to nonattainment of the national air quality standards, or interfere with the maintenance of those standards.

The regulatory requirements for public notice of an opportunity to comment and opportunity to request a public hearing effectively ensure that the Department identifies and clarifies exactly which air quality program requirements are applicable to sources subject to permit requirements and, through the issuance and enforcement of new source review permits, allows the construction and operation of only those new or modified facilities that will be designed, built, and operated without causing or exacerbating a violation of any ambient air quality standard or interfering with the attainment or maintenance of any ambient air quality standards. Public oversight ensures that the permits will adequately:

1. Apply source-specific regulatory requirements with the flexibility to address the individual needs of sources;
2. Ensure that there is no significant deterioration of air quality throughout the Commonwealth;
3. Ensure that emission increases from new major facilities or major expansions located in nonattainment areas are offset by emission reductions from existing facilities by an equal or greater amount;
4. Apply case-by-case control technology determinations and other source-specific requirements; and
5. Apply maximum achievable control technology to limit emissions of hazardous air pollutants.

In the air permit program, a public hearing is required by either a federal or state regulation for all major and certain minor new source review permits. On the other hand, operating permits have no mandate for a public hearing; however there is a mandate to provide an opportunity to request a public hearing. By meeting federal requirements for public participation in permitting actions, this regulation provides a mechanism for the Commonwealth to administer air quality control program requirements without the need for direct federal oversight.

The regulation effectively meets the requirements of § 10.1-1322.01 of the Code of Virginia by addressing three situations: (i) where there is only a public comment period required prior to the permit decision, (ii) where there is a federal or state mandate to hold a hearing prior to a permitting decision, and (iii) where there is a public interest in having the board directly consider the issues involved in the permitting decision and make the final determination. These procedures ensure that the public participation process is effectively implemented for all permit actions, since it is necessary for the protection of public health and welfare.

For Part I and Part II, Articles 4, 5, and 6:

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

### Decision

*Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

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This regulation satisfies the provisions of the law and legally binding state and federal requirements, and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.*

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This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

Part I and Part II, Article 6 of this regulation were last reviewed in 2014. Part II, Articles 4 and 5 of the regulation were last reviewed in 2013. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.