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Periodic Review Report of Findings

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	9VAC5-20 (General Provisions)
Regulation title	Regulations for the Control and Abatement of Air Pollution
Date this document prepared	September 18, 2019

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.

CAA- Clean Air Act

CFR- Code of Federal Regulations

EPA- U.S. Environmental Protection Agency

NOX- nitrogen oxides

PM10 - particulate matter 10 micrometers or less in diameter

RACT- reasonably available control technology

VOC - 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

Section 110 of the Clean Air Act requires that the state implementation plan shall "provide for the establishment and operation of appropriate devices, methods, systems, and procedures necessary to . . .

monitor, compile, and analyze data on ambient air quality . . ." This law is implemented by EPA through the Code of Federal Regulations, 40 CFR Part 51, § 51.212, which states that the plan must provide for "enforceable test methods for each emission limit specified in the plan." To meet this requirement, the Department has, where appropriate, incorporated by reference a series of mostly industry-generated test methods that reflect the most current technical information available and that will enable the state to meet this Act requirement.

Section 110(a) of the Clean Air Act (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 air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. 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 a program for the enforcement of the emission limitations and schedules for compliance; and
- (3) Establish programs for the regulation and permitting of the modification and construction of any stationary source within the areas covered by the plan to assure the achievement of the ambient air quality standards.

Clean Air Act § 182 (a)(3)(B) requires that all owners of stationary sources emitting volatile organic compounds (VOC) or nitrogen oxides (NOX) within a marginal nonattainment area provide the state with an annual emissions statement that shows the actual emissions of VOC and NOX from that source. The state may waive this reporting requirement for sources which emit less than 25 tons per year of VOC or NOX, if the state provides an inventory of emissions from such class or category of sources, based on the use of acceptable emission factors or other methods acceptable to EPA.

Clean Air Act § 182 (b) requires that program requirements for marginal nonattainment areas be applicable in moderate nonattainment areas.

Clean Air Act § 182 (c) requires that program requirements for both marginal and moderate nonattainment areas be applicable in serious nonattainment areas.

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, as summarized below.

Subpart K of 40 CFR Part 51 (Source Surveillance) specifies the 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 of 40 CFR Part 51 (Legal Authority) specifies identification of legal authority to implement plans and assignment of legal authority to local agencies.

Section 51.230 of Subpart L specifies that each state implementation plan 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; and

(4) Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, 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.

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

In the Federal Register, EPA has issued detailed guidance that sets out its preliminary views on the implementation of the air quality planning requirements applicable to nonattainment areas. This guidance is titled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (or "General Preamble"). See 57 FR 13,498 (April 16, 1992) and 57 FR 18,070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements. See 57 FR 31,477 (July 16, 1992) (announcing the availability of draft guidance for lead nonattainment areas and serious PM10 nonattainment areas); 57 FR 55,621 (Nov. 25, 1992) (guidance on NOX RACT requirements in ozone nonattainment areas). For this subject, the guidance provides little more than a summary and reiteration of the provisions of the Act.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. Some provisions of this regulation were adopted in 1972, when no detailed guidance existed. Therefore, the legally binding federal mandate for this regulation is general, not specific, consisting of the Clean Air Act's broad-based directive to states to meet the air quality standards.

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 from stationary source operations 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 § 10.1-1307 C specifies that the board may grant local variances from regulations and issue orders to that effect only after a public hearing has been conducted pursuant to the public advertisement of the hearing and the public has been given the opportunity to comment on the variance.

Code of Virginia § 10.1-1307.01 specifies that the board shall notify localities particularly affected (i.e., localities bearing any identified disproportionate material air quality impact not experienced by other localities) before promulgating any regulation, granting any variance, or issuing any major permit. Such notice shall appear in a local paper of general circulation at least 30 days prior to the close of any public comment period and shall contain a statement of the estimated local impact of the proposed action. The notice shall be mailed to the chief elected official and chief administrative officer and the planning district commission for those localities particularly affected. Written comments shall be accepted for at least 15 days after any hearing on the regulation, variance, or permit unless the board votes to shorten the period.

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.

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.

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.

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

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.

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.

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 ensure that the general administrative and air quality program functions that support the Regulations for the Control and Abatement of Air Pollution (9VAC5 Chapter 10 through 9 VAC 5 Chapter 85) are efficiently administered.
3. To establish provisions enabling the board and department to carry out source surveillance and compliance activities.
4. To provide a mechanism to administer certain air quality control program requirements without the need for federal oversight.

The regulation is necessary for the protection of public health and welfare, as it is needed to meet the primary goals of the CAA and specific requirements of the Virginia Air Pollution Control Law.

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).

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.

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.

No comments were received during the public comment period.

The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible.

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

This regulation was last reviewed in 2001. 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.

Family Impact

Please assess the potential impact of the regulation's impact on the institution of the family and family stability.

This regulation does not have a direct impact on the institution of the family and family stability.