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Periodic Review Report of Findings

Agency name	Air Pollution Control Board
Virginia Administrative Code (VAC) citation	9VAC5-210
Regulation title	Resolution for Dispute Resolution
Date this document prepared	October 31, 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.

VDEQ - Virginia Department of Environmental Quality

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 10.1-1186.3 of the Code of Virginia allows the State Air Pollution Control Board, the State Water Control Board and the Virginia Waste Management Board to use mediation and alternative dispute resolution in certain circumstances if they choose to do so. Section 10.1-1186.3 D specifically directs the boards to adopt rules and regulations concerning the standards and procedures to conduct mediation and dispute resolution. Section 10.1-1308 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.

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.

Section 10.1-1186.3 D of the Code of Virginia specifically directs the State Air Pollution Control Board, the State Water Control Board and the Virginia Waste Management Board to adopt these rules and regulations; therefore, no viable alternative was identified.

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.

An advisory committee was not formed for the purpose of assisting with this review.

Commenter	Comment	Agency response
Rob Lanham, Virginia Transportation Construction Alliance (VTCA)	9VAC5-210-40 (D) reads: "The outcome of any dispute resolution procedure shall not be binding upon the board but may be considered by the board in issuing a permit or promulgating a regulation." This provides VDEQ with an out through additional level of approval beyond the mediation. This is not consistent with the rules of mediation. We believe most would take issue with this. As well this is a disadvantage to a small businesses that may not have the resources to litigation of an issue and court and may decide to go to mediation as a lower cost alternative, only to find out those at VDEQ that were negotiating on the behalf of VDEQ had to get board approval and without such approval the agreement would not be valid.	§10.1-1186.3 C. of the Code of Virginia states "The outcome of any mediation or dispute resolution proceeding shall not be binding upon a Board, but may be considered by a Board in issuing a permit or promulgating a regulation." The language in 9VAC5-210-40 D of the regulation is consistent with the requirements of state law; therefore, no change will be made to the regulation in response to this comment.

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.

The regulation is clearly written and easily understandable. This regulation provides for a program that promotes the fair, expeditious, voluntary, and consensual resolution of disputes related to a regulatory action or a permit issuance. The resolution of these disputes can promote the protection of public health, safety and welfare.

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).

The regulation is being retained as is without changes. The content of the regulation remains current and no changes are necessary at this time.

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 the 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.

The regulation continues to be needed. The regulation is required by §10.1-1186.3 D of the Code of Virginia.

One comment was received during the public comment period requesting a change to the regulation. The commenter requested a change that was inconsistent with the requirements of state law.

The regulation provides guidelines for the dispute resolution process and is written to provide guidelines to the dispute resolution process. The regulation includes issues such as the selection of a neutral, the responsibilities of the neutral and the expectations of those involved in the process. The regulations establish the ground rules for the dispute resolution process.

This is a state only regulation and does not overlap with other federal or state laws or regulations.

This regulation was last amended in 2015 to update statutory references. The content of the regulation remains current and no changes are necessary at this time.

There is a continued need for this regulation and the agency has determined that this regulation imposes no additional regulatory burden on small businesses. The use of the dispute resolution process is voluntary and not required.

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 or family stability.