

# *Virginia Regulatory Town Hall*

## Periodic Review of Existing Regulations Agency Background Document

<b>Agency Name:</b>	State Air Pollution Control Board
<b>Regulation Title:</b>	Regulations for the Control and Abatement of Air Pollution
<b>Subtitle:</b>	General Provisions
<b>VAC Number:</b>	9 VAC 5 Chapter 20 (9 VAC 5-20-10 et seq.)
<b>Date:</b>	November 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25 and Executive Order Twenty-Five (98) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

### Summary

*Please provide a brief summary of the regulation and its purpose. There is no need to state each provision, instead give a general description of the regulation.*

The purpose of the regulation is to provide general administrative and air quality program provisions that support other provisions of the Regulations for the Control and Abatement of Air Pollution (9 VAC 5 Chapter 10 through 9 VAC 5 Chapter 80), which are designed for the protection of public health and welfare. The provisions of the regulation are summarized as follows:

1. The regulation applies throughout Virginia.
2. In Part I, the regulation establishes the overall applicability of the Regulations for the Control and Abatement of Air Pollution. This part of the regulation also lists technical documents incorporated by reference elsewhere in the Regulations for the Control and Abatement of Air Pollution, and provides procedures for granting variances, for preventing the circumvention of regulations, and for adopting policies and procedures. It also delineates the relationship of state regulations to federal regulations.
3. In Part II, general ground rules for facility registration, control programs, facility and control equipment maintenance or malfunction, shutdown, and certification of documents are established.

4. Part II also contains lists of various area and region designations, including air quality control regions, urban areas, metropolitan statistical areas, air quality maintenance areas, nonattainment areas, prevention of significant deterioration areas, and volatile organic compound and nitrogen oxides emissions control areas.

## Legal Requirements

*Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the regulation. The discussion of these requirements should include a description of their scope and the extent to which the requirements are mandatory or discretionary. Full citations for the legal requirements and, if available, web site addresses for locating the text of the cited legal provisions should be provided.*

### Federal Requirements

Federal Clean Air Act (CAA):

<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):

[http://www.gpo.gov/su\\_docs/aces/aces140.html](http://www.gpo.gov/su_docs/aces/aces140.html)

*Applicability:* 40 CFR 51.230 specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons.

*Documents incorporated by reference:* 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.

*Registration:* Clean Air Act § 110(a) mandates that each state adopt and submit to 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 require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

Clean Air Act § 182 (a)(3)(B) requires that all owners of stationary sources emitting volatile organic compounds (VOC) or nitrogen oxides (NO<sub>x</sub>) within a marginal nonattainment area provide the state with an annual emissions statement that shows the actual emissions of VOC and NO<sub>x</sub> from that source. The state may waive this reporting requirement for sources which emit less than 25 tons per year of VOC or NO<sub>x</sub>, 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. Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

40 CFR 51.230 specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to 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.

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 PM<sub>10</sub> nonattainment areas); 57 FR 55,621 (Nov. 25, 1992) (guidance on NO<sub>x</sub> 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.

*Control programs:* Clean Air Act § 110(a) mandates that each state adopt and submit to 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 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. The plan shall also include provisions to establish schedules for compliance.

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

40 CFR 51.230 specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards.

### State Requirements

Code of Virginia:

<http://leg1.state.va.us/000/cod/codec.htm>

Virginia Administrative Code (VAC):

<http://leg1.state.va.us/000/reg/toc.htm>

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.

*Variances:* 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.

### Comparison With Statutory Mandates

No provision of the regulation exceeds the specific minimum requirements of any legally binding state or federal mandate. An explanation as to how this conclusion was reached is set forth below.

The agency performed an analysis to determine if statutory mandates justify continuation of the regulation. The analysis revealed that statutory justification does exist for the regulation. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the control of criteria pollutants. These statutes still remain in force with the provisions that initiated adoption of the regulation still intact.

Analysis reveals that the regulation is consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program, and air pollution control methodology and technology) which justified the original issuance of the regulation have not changed to a degree that would justify a change to the basic requirements of the regulation.

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.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. If no public comment was received, please include a statement indicating that fact*

No public input was received during the public comment period for this periodic review.

### Effectiveness

*Please provide a description of the specific and measurable regulatory goals of the regulation. Detail the effectiveness of the regulation in achieving such goals.*

The regulation has been effective in achieving its specific and measurable goals, which are as follows:

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 (9 VAC 5 Chapter 10 through 9 VAC 5 Chapter 80) are efficiently administered.
3. To establish provisions enabling the board and department to carry out source surveillance and compliance activities.

### Need

*Please provide the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens or is essential for the efficient and economical performance of an important governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.*

Among the primary goals of the Clean Air Act are the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS.

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air. EPA requires that each state submit a plan (the State Implementation Plan or SIP), including any laws and regulations necessary to enforce the plan, showing how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the plan must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance). The Virginia SIP was submitted to EPA in early 1972. Many revisions to the SIP have been made since the original submittal in 1972. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare a SIP, or EPA does not approve a submitted SIP, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards. Generally, the SIP is revised, as needed, based upon changes in the federal Clean Air Act and its requirements.

The PSD program is designed to protect air quality in areas where the air is cleaner than required by the NAAQS. The program has three classifications for defining the level of allowable degradation: Class I is the most stringent classification, allowing for little additional pollution, while Class III allows the most. All of Virginia is classified at the moderate level, Class II, with the exception of two Class I federal lands.

The General Provisions of Chapter 20 are a critical component of the regulations, serving four vital purposes: (i) to establish provisions enabling the board and department to carry out mandates established by federal and state law and regulation; (ii) to establish detailed mechanisms for compliance with those mandates; (iii) to provide crucial information on technical documents incorporated by reference, variances, the prevention of circumvention of the regulations, the adoption of policies and procedures, and the relationship of state regulations to federal regulations; and (iv) to provide a comprehensive listing of the various classifications by which the Commonwealth's air quality areas are apportioned. These

general provisions are of considerable importance to both the general public and the regulated community. Part I, in conjunction with Part II, serves as the framework for the regulations, articulating their legal context as well as the ramifications of their existence. Without Chapter 20, the regulations would lack coherence, clarity, and consequence.

## Alternatives

*Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives considered and will be considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.*

Alternatives have been considered by the Department to meet the need. The Department has determined that retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the statutory requirements and need for 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 was chosen because the current regulation provides the least onerous method for 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 or federal mandates. This option was not chosen because it could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits.
3. Repeal the regulation or amend it to satisfy the provisions of the legally binding state or federal mandates. This option was not chosen because the regulation is effective in meeting its goals and already satisfies those mandates.

## Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

The Department, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

## Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the regulation on the institution of the family and family stability including to what extent the regulation 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: 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.

### Recommendation

*Please state whether the agency is recommending the regulation be retained and the reasons such a recommendation is being made.*

The regulation satisfies the provisions of the legally binding state or federal requirements and is effective in meeting its goals; therefore, it is recommended that the regulation be retained without amendment.