

TENATIVE AGENDA
STATE AIR POLLUTION CONTROL BOARD MEETING

THURSDAY, NOVEMBER 16, 2023

IN PERSON ONLY – GALLERY, COMMUNITY COLLEGE WORKFORCE ALLIANCE,
1651 EAST PARHAM ROAD, RICHMOND, VA 23228

Meeting will be Live-Streamed. Go to: www.deq.virginia.gov
Any Updates To Details/Final Arrangements To Be Announced On Virginia Regulatory Town Hall

Convene – 10:30 A.M

Agenda Item	Presenter
Call to Order	Guy
Review and Approve Agenda	Board Members
Review and Approve Minutes (September 13, 2023)	Board Members
Fast-Track Regulation	
<i>Electronic Postmarks (Rev. C23)</i> <i>Regulations for the Control and Abatement of Air Pollution</i> <i>9VAC5-40</i>	Sabasteanski
Final Exempt Regulation	
<i>Federal Documents Incorporated by</i> <i>Reference (Rev. D23)</i> <i>New and Modified Stationary Sources (9VAC5-50), Hazardous Air</i> <i>Pollutant Sources (9VAC5-60)</i>	Sabasteanski
Report to the Board Regarding Controversial Permits	Dowd
<i>Chesterfield Energy Reliability Center (CERC)</i> <i>Southeastern Public Service Authority (SPSA) Regional Landfill</i>	
Public Forum	
<i>Individuals may comment on matters other than those on the agenda or</i> <i>pending regulatory actions</i>	

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Rachael Harrell at (804) 801-2932.

PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions made by the Department of Environmental Quality (Department). These procedures establish the times for the public to provide appropriate comment to the Board for regulatory action and the Department for case decisions for consideration.

For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (e.g., issuance and amendment of permits and enforcement orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. (Note: as of July 1, 2022, the Department takes final action on all case decisions.) As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held, usually 45 days.

In light of these established procedures, the Board accepts public comment on regulatory actions as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Also, public comment will be accepted for certain final exempt actions where there has been no public comment period. Persons are allowed up to 3 minutes to address the Board on the emergency regulation and final exempt actions under consideration.

POOLING MINUTES ON REGULATORY ACTIONS: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION ON A REGULATORY ACTION will not be accepted at the meeting. The Board expects comments and information on a regulatory action to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and

discussions at the Board meeting. Should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda or pending regulatory actions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less. Note, there is no pooling of minutes during the public forum.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Rachael Harrell, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 801-2932, e-mail: rachael.harrell@deq.virginia.gov .

Additional Meeting Information:

- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the Community College Workforce Alliance, its employees and guests.
- All violators are subject to removal.



Commonwealth of Virginia

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

To: Members of the State Air Pollution Control Board

From : Rachael Harrell

Date: November 3, 2023

Subject: Minutes

Attached are the minutes from your meeting on September 13, 2023. Staff will seek your approval of the minutes at your next meeting.

If you have any questions, please contact Rachael Harrell at (804) 801-2932 or rachael.harrell@deq.virginia.gov.

DRAFT MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING

WEDNESDAY, September 13, 2023

COMMUNITY COLLEGE WORKFORCE
ALLIANCE 1651 EAST PARHAM ROAD,
RICHMOND, VA 23228

Board Members Present:

Kimberely Beamer
James Guy II
Jay Holloway
David Hudgins
Russell Mait

Board Members Absent: Dr. Lornel Tompkins
Hope Cupit

Department of Environmental Quality:

Alex Samms, Chief Deputy

Rachael Harrell, Board Coordinator

Attorney General's Office:

Eric Lansing, Assistant Attorney General

The meeting convened at 10:31 a.m. The meeting adjourned at 11:12 a.m.

Minute No. 1 – Review and Approval of Agenda: The board unanimously approved the agenda.

Minute No. 2– June 7, 2023 Minutes: The board unanimously approved the minutes from the board's meeting on June 7, 2023.

Minute No. 3- Fast-Track Action Rev. A23: Ms. Karen Sabasteanski recommended that the board authorize the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or 3 more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

The Board unanimously approved the fast-track regulation.

Minute No. 4- Fast-Track Action Rev. B23: Ms. Karen Sabasteanski recommended that the board authorize the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or 3 more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

The Board unanimously approved the fast-track regulation.

Minute No. 5 - Report Regarding Controversial Permits: Mr. Michael Dowd, Air and Renewable Energy Division Director, informed the board that the department will be considering a permit that meets the statutory definition of controversial for the Chesterfield Energy Reliability Center (CERC).

Minute No. 6- Division Director Report: The board received updates from Mr. Dowd.

Minute No. 7- Public Comment Forum: The following individual spoke during the public comment forum: Glen Besa.

**COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD MEETING**

November 16, 2023

SUBJECT: Electronic Postmarks (9VAC5 Chapters 40, 50, 60, 80, 510, 530 and 540, Rev. C23) - Request to Publish Proposal for Public Comment and Use the Fast-Track Process

CONTACT: Karen G. Sabasteanski
karen.sabasteanski@deq.virginia.gov/804-659-1973
Office of Air Data Analysis and Planning
Department of Environmental Quality

INTRODUCTION

In accordance with the Office of Regulatory Management Procedures for Review of State Regulations, state agencies are required to review regulations periodically in order to determine whether they are still needed or meet the purpose for which they were originally promulgated. A regulated entity suggested that DEQ should allow for electronic submittal; essentially, an electronic submission should be considered to be "postmarked" as if it were a physical copy. The department agrees that this amendment is administratively and environmentally beneficial, and has made similar amendments as appropriate throughout the regulations of the Board. Several minor corrections are also being made.

The department is requesting approval of a proposal for public comment that meets federal and state statutory and regulatory requirements. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

PUBLIC PARTICIPATION ACTIVITIES

The department did not issue a notice of intended regulatory action nor conduct any associated public participation activities because we are requesting that the board adopt the amendments as final regulations provided they complete the fast-track rulemaking process as provided in the Code of Virginia. Under the provisions of § 2.2-4012.1 of the Administrative Process Act, agencies may use the fast-track rulemaking process for regulations that are expected to be noncontroversial. The reasons for using the fast-track rulemaking process may be found in the agency background document.

Under the fast-track process, the proposal will be subject to a 30-day public comment period. If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, or the Department finds it necessary, based on public

comments or for any other reason, to make any changes to the proposal, the Department will (i) file notice with the Registrar of Regulations for publication in the Virginia Register and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Otherwise, the regulation becomes effective 15 days after the end of the public comment period.

SUMMARY OF DRAFT REGULATION AMENDMENTS

Wherever information is required to be submitted via postal mail, an electronic option is also provided. An email submittal is considered to have been "postmarked." Several minor corrections are also being made.

SUPPORTING DOCUMENTATION

Immediately following this agenda memo are the following documents:

1. The agency background document.
2. The draft proposed regulation.

DEPARTMENT RECOMMENDATION

It is recommended that the Board authorize the Department to:

1. Promulgate the attached proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.



townhall.virginia.gov

Fast-Track Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary: 9VAC5-40 (Existing Stationary Sources) Secondary: 9VAC5-45 (Consumer and Commercial Products), 9VAC5-50 (New and Modified Stationary Sources), 9VAC5-60 (Hazardous Air Pollutant Sources), 9VAC5-80 (Permits for Stationary Sources), 9VAC5-510 (Nonmetallic Mineral Processing General Permit), 9VAC5-530 (Electric Generator Voluntary Demand Response General Permit), 9VAC5-540 (Emergency Generator General Permit)
VAC Chapter title(s)	Regulations for the Control and Abatement of Air Pollution
Action title	Electronic postmarks (Rev. C23)
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

In accordance with the Office of Regulatory Management Procedures for Review of State Regulations, state agencies are required to review regulations periodically in order to determine whether they are still needed or meet the purpose for which they were originally promulgated. A regulated entity suggested that DEQ should allow for electronic submittal; essentially, an electronic submission should be considered to be "postmarked" as if it were a physical copy. The department agrees that this amendment is administratively and environmentally beneficial, and has made similar amendments as appropriate throughout the regulations of the Board. Several minor corrections are also being made.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

DEQ – Department of Environmental Quality
EPA - U.S. Environmental Protection Agency

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On November 16, 2023, the State Air Pollution Control Board:

1. Authorized the department to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized the department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The primary impetus for this regulatory change is the Office of Regulatory Management Procedures for Review of State Regulations, which implements Executive Order 19, Development and Review of State Regulations. All existing state regulations promulgated by executive branch agencies must be reviewed every four years to determine whether they should be continued without change or be amended or repealed. A periodic review was conducted accordingly for 9VAC5-40, Existing Stationary Sources, from June 6 through June 27, 2022.

A comment was received with respect to the reporting requirements of 9VAC5-40-50 that require all reports and notifications to be submitted to the Board through the U.S. postal service. The commenter requested that DEQ allow for electronic submittal by emailing a copy to the Regional Director or another automated email to be distributed to the appropriate region after the document has been authenticated by

using Adobe sign in accordance with DEQ's e-signature guidance. In addition, since Virginia has delegated authority over most of the federal regulations under 40 CFR Part 60 and Part 63 regulations, those delegation documents must also be changed to allow for electronic submission prior to sources initiating such change. This process aligns with DEQ's e-Signature guidance and is more efficient for both DEQ and the compliance entities.

DEQ agrees that 9VAC5-40-50 should be amended to allow for electronic submittal, and has made similar changes elsewhere in the regulations as appropriate. With respect to 40 CFR Part 60 and 63, Virginia's regulations must be consistent with EPA's in order to meet our delegation agreements. It is understood that EPA has been updating its regulations when possible to allow electronic reporting, although this has not been fully accomplished, and there are a number of "legacy" regulations that will not likely be re-opened for this purpose. However, 40 CFR 60.19(b) indicates that acceptable alternative means of delivery includes the use of electronic media, and 40 CFR 63.9(k) explicitly requires electronic submission; therefore, there is no need to amend Virginia's delegated standards.

Finally, a number of minor corrections are being made in order to make certain provisions internally consistent.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency'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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendment is available upon request.

Promulgating Entity

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

Federal Requirements

Section 109 (a) of the federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) for criteria pollutants to protect public health. Section 110 mandates that each state adopt and submit to EPA a state implementation plan (SIP) which provides for the implementation, maintenance, and enforcement of the NAAQS. To this end, plans must 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 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. Subpart K of Part 51 (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. Subpart L of Part 51 (Legal Authority) specifies that the state implementation plan must show that the state has legal authority to implement the plans, 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

Section 111(d) of the Act requires that each state submit a plan which will establish standards of performance for any existing source for any air pollutant for which criteria have not been issued or which is not included on a list published under § 110, but to which a standard of performance under this section would apply if such existing source were a new source, and provides for the implementation and enforcement of such standards of performance.

Section 129 of the CAA requires that EPA establish standards of performance for both new and existing solid waste incineration sources, with new sources covered under § 129(a) and existing sources covered under § 129(b). It also requires states to submit plans for these sources in a process similar to that delineated in § 111(d). Monitoring requirements must be included in each performance standard, and must require sources to monitor emissions at various points, and to report monitoring results.

40 CFR Part 60 subpart B provides the criteria for adoption and submittal of state plans for designated facilities under §§ 111 and 129, including emissions reporting.

On April 20, 2018, EPA issued its Electronic Signature Policy which allows for the use of electronic signatures on electronically submitted records. The policy details requirements to meet EPA's Cross-Media Electronic Reporting Rule and are driven by Title 40 of the Code of Federal Regulations, Part 3.

State Requirements

Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A). Notification, recording and reporting requirements are needed in order to properly administer and implement the regulations of the Board.

In 2000, Virginia passed the Uniform Electronic Transaction Act, § 59.1-482 et seq., which authorizes a transaction to be conducted by electronic means between agreeable parties. Specifically, the Act recognizes the legal enforceability of an electronic signature: "A record or signature may not be denied legal effect or enforceability solely because it is in electronic form."

Subsequently, DEQ has issued a formal policy entitled "[E-Signature Guidance](#)." This guidance explains how e-signatures are to be submitted and authenticated in accordance with the transaction act. It is necessary to amend the regulations in order to be consistent with this federally guided policy.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

Explicitly allowing electronic submissions is administratively and environmentally appropriate, and DEQ has amended the regulations accordingly. This is consistent with both DEQ and federal guidance and regulations. Although there is no direct environmental benefit from electronic submittal other than conservation of certain physical resources such as paper, electronic submittal is faster and more reliable than other forms of delivery. This will bring accuracy and consistency to necessary reporting requirements, and make the implementation and administration of regulatory requirements clearer and easier for both the sender (the regulated entity) and the recipient (the department).

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Wherever information is required to be submitted via postal mail, an electronic option is also provided. An email submittal is considered to have been "postmarked." Several minor corrections are also being made.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1. Public: There is a general benefit to the overall welfare of the public in that allowing electronic submittals contributes to the efficient and effective functioning of government. There may be a minor direct positive impact to the environment in that fewer physical supplies such as paper will be needed in order to make a submission.
2. Department: There is a general benefit to the department in that allowing electronic submittals contributes to the efficient and effective functioning of government.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The proposed regulation amendments are not more restrictive than the applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There is no state agency that will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other state agencies.

Localities Particularly Affected

There is no locality that will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other localities.

Other Entities Particularly Affected

There is no entity that will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other entities.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The regulatory change will not result in any cost to the department. The sources of department funds to carry out this regulation are the general fund and the federal trust (grant money provided by EPA under § 105 of the federal Clean Air Act or permit fees charged to affected entities under the permit program). The activities are budgeted under the following program (code): Environmental and Resource Management (51300); Air Protection Permitting (51325); Air Protection Compliance and Enforcement (51326); Air Protection Planning and Policy (51328).</p> <p>A general efficiency in permitting and compliance operations may be realized as a result of the regulatory amendments.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>The regulatory change will not result in any cost to any state agency.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There may be a general benefit in more efficient program operations.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>No impacts to any locality are anticipated.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The general public welfare will likely benefit from the efficient and effective functioning of government. The amendments will contribute to the clarity of the regulations of the Board overall.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Any individuals, businesses, or other entities subject to a regulatory reporting requirement will be affected by the regulatory change. This potentially affects any entity operating under an air quality permit. Currently, there are approximately 3200 air permits (primarily for minor sources); most of the affected facilities will at one time or another need to submit written notifications to DEQ. It is understood (anecdotally) that most facilities are already making necessary submittals electronically; adding the explicit ability to do so is simply codifying what is currently taking place and what is currently allowed by state and federal policy. However, the fact that there are provisions in the regulations that do not explicitly allow an electronic option introduces an element of confusion among the regulated community and DEQ air compliance staff.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that:</p> <ul style="list-style-type: none"> a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million. 	<p>Currently, there are approximately 3200 air permits; most of the affected facilities will at one time or another need to submit written notifications to DEQ. Most of these of these permits are for minor stationary sources, and many of these sources are considered to be small businesses. It is understood that most facilities are already making required submittals electronically in accordance with DEQ policy; the clarifying regulation amendments will likely address any that may not.</p>
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>No projected costs for any individuals, businesses, or other entities will result from the regulatory change. It is anticipated that there may be a minor benefit in terms of time and materials from submitting information electronically instead of by traditional postal mail.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>Electronic submittals promote the efficient and effective functioning of government by allowing facilities to meet their notification and reporting requirements without unnecessary--and literal--paperwork. Allowing electronic submittals also affords a level of confidence that the facility has properly reported directly to the department in a timely manner without reliance on a delivery system over which neither the facility nor the department has any control.</p>

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Alternatives to the proposed regulation amendments were considered by the Board. The Board determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the Board, along with the reasoning by which the board has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations. This option was chosen because it meets the stated purpose of the regulation: to help promote public welfare by allowing electronic submittals.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because it would not meet the stated purpose of the regulation.
3. Take no action to amend the regulation and continue to require an outdated submittal system. This option was not chosen because it would not meet stated purpose of the regulation.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

The proposed amendments will have no impact on small businesses other than generally making the regulations of the Board easier to manage and follow.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for

publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

In addition to any other comments, the Board 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 Board 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 proposal.

The Board also seeks comments on whether or not there may be any impacts to the Virginia SIP as a result of this action.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Karen G. Sabasteanski, Policy Analyst, Air and Renewable Energy Division, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email karen.sabasteanski@deq.virginia.gov, fax 804-698-4510). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC5-40, Existing Stationary Sources			
9VAC5-40-10		Applicability	Remove limitation of electronic reporting from documents that require certification (9VAC5-20-230). Needed in order to allow electronic transmission

			in accordance with EPA and state policies.
9VAC5-40-50		Notification, records, and reporting	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-45, Consumer and Commercial Products			
9VAC5-45-10		Applicability	Remove limitation of electronic reporting from documents that require certification (9VAC5-20-230). Needed in order to allow electronic transmission of such certifications in accordance with EPA and state policies.
9VAC5-45-50		Notification, records and reporting	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-45-220		Administrative requirements	Correct text to specify that filing of certain information is at the request of the board. Needed for consistency and accuracy.
9VAC5-45-320		Alternative control plan for consumer products	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-45-440		Alternative control plan for consumer products	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-45-560		Administrative requirements	Correct text to specify that filing of certain information is at the request of the board. Needed for consistency and accuracy.
9VAC5-50, New and Modified Stationary Sources			
9VAC5-50-10		Applicability	Remove limitation of electronic reporting from documents that require certification (9VAC5-20-230). Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-50-50		Notification, records, and reporting	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-60, Hazardous Air Pollutant Sources			
9VAC5-60-10		Applicability	Remove limitation of electronic reporting from documents that require certification (9VAC5-20-230). Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-60-50		Notification, records, and reporting	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.

9VAC5-80, Permits for Stationary Sources			
9VAC5-80-350		Annual permit program emissions fee payment	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-80-1105		Permit exemptions	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-80-2290		Permit application fee payment.	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-80-2350		Annual permit maintenance fee payment	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-510, Nonmetallic Mineral Processing General Permit			
9VAC5-510-230		Reporting requirements	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-530, Electric Generator Voluntary Demand Response General Permit			
9VAC5-530-210		Reporting requirements	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-530-290		Reporting requirements	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.
9VAC5-540, Emergency Generator General Permit			
9VAC5-540-210		Reporting requirements	Amend to allow electronic reporting. Needed in order to allow electronic transmission in accordance with EPA and state policies.

Office of Regulatory Management

Economic Review Form

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary: 9VAC5-40 (Existing Stationary Sources) Secondary: 9VAC5-45 (Consumer and Commercial Products), 9VAC5-50 (New and Modified Stationary Sources), 9VAC5-60 (Hazardous Air Pollutant Sources), 9VAC5-80 (Permits for Stationary Sources), 9VAC5-510 (Nonmetallic Mineral Processing General Permit), 9VAC5-530 (Electric Generator Voluntary Demand Response General Permit), 9VAC5-540 (Emergency Generator General Permit)
VAC Chapter title(s)	Regulations for the Control and Abatement of Air Pollution
Action title	Electronic submittals (Rev. C23)
Date this document prepared	
Regulatory Stage (including Issuance of Guidance Documents)	

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None. Indirect Costs: Describe the indirect costs of the proposed change. None. Direct Benefits: Describe the direct benefits of this proposed change here. None. Indirect Benefits: Describe the indirect benefits of the proposed change. None.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) None.
(3) Net Monetized Benefit	None.	
(4) Other Costs & Benefits (Non-Monetized)	The general anticipated benefits of the proposed change include increased clarity of the regulations, consistency with federal and state policy, conservation of certain physical resources such as paper, and improved accuracy and consistency of necessary reporting requirements. Electronic submittals generally contribute to the efficient and effective functioning of government.	
(5) Information Sources	U.S. Environmental Protection Agency (EPA) policies and regulations; DEQ policy https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7146); comments received during Periodic Review: https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2127	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None. Indirect Costs: Describe the indirect costs of the proposed change. None. Direct Benefits: Describe the direct benefits of this proposed change here. None. Indirect Benefits: Describe the indirect benefits of the proposed change. None.	
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Net Monetized Benefit	None	
(4) Other Costs & Benefits (Non-Monetized)	The benefits identified in Table 1a would not be realized. The regulatory community has indicated that the regulations as currently written are confusing, and not making the changes would continue this confusion.	
(5) Information Sources		

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None. Indirect Costs: Describe the indirect costs of the proposed change. None. Direct Benefits: Describe the direct benefits of this proposed change here. None. Indirect Benefits: Describe the indirect benefits of the proposed change. None.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) None.
(3) Net Monetized Benefit	None.	
(4) Other Costs & Benefits (Non-Monetized)	There are no alternative approaches to these amendments.	
(5) Information Sources		

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here. None.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change. None.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here. None.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change. None.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) None.
(3) Other Costs & Benefits (Non-Monetized)	<p>Currently, there are approximately 3200 air permits (primarily for minor sources); most of the affected facilities will at one time or another need to submit written notifications to DEQ. It is our (anecdotal) understanding that most facilities are already making necessary submittals electronically; adding the explicit ability to do so is simply codifying what is currently taking place and what is currently allowed by state and federal policy. However, the fact that there are provisions in the regulations that do not explicitly allow an electronic option introduces an element of confusion among the regulated community and DEQ air compliance staff.</p> <p>There may be a minor benefit in terms of time and materials from submitting information electronically instead of by traditional postal mail.</p> <p>Electronic submittals promote the efficient and effective functioning of government by allowing facilities to meet their notification and reporting requirements without unnecessary--and literal--paperwork. Allowing electronic submittals also affords a level of confidence that the facility has properly reported directly to the department in a timely manner without reliance on a delivery system over which neither the facility nor the department has any control.</p>	
(4) Assistance		
(5) Information Sources		

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None. Indirect Costs: Describe the indirect costs of the proposed change. None. Direct Benefits: Describe the direct benefits of this proposed change here. None. Indirect Benefits: Describe the indirect benefits of the proposed change. None.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) None.
(3) Other Costs & Benefits (Non-Monetized)	The general public welfare will likely benefit from the efficient and effective functioning of government. The amendments will contribute to the clarity of the regulations of the Board overall.	
(4) Information Sources		

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. None. Indirect Costs: Describe the indirect costs of the proposed change. None. Direct Benefits: Describe the direct benefits of this proposed change here. None. Indirect Benefits: Describe the indirect benefits of the proposed change. None.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) None.

(3) Other Costs & Benefits (Non-Monetized)	See Tables 1 a and 2. Of the approximately 3200 permitted facilities, it is likely that many of them are small businesses that will benefit from implementation of the proposed amendments.
(4) Alternatives	
(5) Information Sources	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Net Change	
	Statutory:					
	Discretionary:					
					Total Net Change of Statutory Requirements:	None.
					Total Net Change of Discretionary Requirements:	None.

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
				None.

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
		None.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length
			None.

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

9VAC5 CHAPTER 40
EXISTING STATIONARY SOURCES

PART I
SPECIAL PROVISIONS

9VAC5-40-10. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply to existing sources for which emission standards are prescribed under this chapter.

B. The provisions of this chapter shall not apply to sources specified below except in cases where the provisions of this chapter (i) specifically provide otherwise or (ii) are more restrictive than the provisions of 9VAC5 Chapter 50 (9VAC5-50-10 et seq.), 9VAC5 Chapter 80 (9VAC5-80-10 et seq.), or any permit issued pursuant to 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) Sources exempted under this subsection shall be subject to the provisions of 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) or 9VAC5 Chapter 60 (9VAC5-60-10 et seq.), or both, as applicable.

1. Any stationary source (or portion of it), the construction, modification or relocation of which commenced on or after March 17, 1972.

2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

C. If a facility becomes subject to any requirement in the Regulations for the Control and Abatement of Air Pollution because it exceeds an exemption level, the facility shall continue to be subject to all applicable requirements even if future conditions cause the facility to fall below the exemption level.

D. Any owner subject to the provisions of this chapter may provide any report, notification or other document by electronic media if acceptable to both the owner and board. ~~This subsection shall not apply to documents requiring signatures or certification under 9VAC5-20-230.~~

9VAC5-40-50. Notification, records and reporting.

A. Any owner of an existing source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9VAC5-40-40 C. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

2. The date of any emission test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

3. The anticipated date for conducting the opacity observations required by 9VAC5-40-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during an emission test. The notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

B. Any owner of an existing source subject to the provisions of 9VAC5-40-40 A shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of such source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable emission standard) and either a monitoring systems performance report or a summary report form, or both, to the board semiannually, except when (i) more frequent reporting is specifically required by an applicable emission standard or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or (ii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All reports shall be postmarked or submitted electronically by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 9VAC5-40-41 B 6, any conversion factors used, and the date and time of commencement and completion of each period of excess emissions. The process operating time during the reporting period.

2. Specific identification of each period of excess emissions that occurs during startups, shutdowns and malfunctions of the source. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

3. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

4. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in the report.

D. Any owner of an existing source subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and emission testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two years (unless a longer period is specified in the applicable standard) following the date of such measurements, maintenance, reports and records.

E. Any data or information required by the Regulations for the Control and Abatement of Air Pollution, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard shall be recorded or maintained in a time frame consistent with the averaging period of the standard.

F. The owner of a stationary source shall keep records as may be necessary to determine its emissions. Any owner claiming that a facility is exempt from the provisions of the Regulations for the Control and Abatement of Air Pollution shall keep records as may be necessary to demonstrate to the satisfaction of the board its continued exempt status.

G. The owner of an existing source subject to any emission standard in Article 26 (9VAC5-40-3560 et seq.) through Article 36 (9VAC5-40-5060 et seq.) of Part II of 9VAC5 Chapter 40 shall maintain records in accordance with the applicable procedure in 9VAC5-20-121.

H. Upon request of the board, the owner of an existing source subject to the provisions of this chapter shall provide notifications and report, revise reports, maintain records or report emission test or monitoring result in a manner and form and using procedures acceptable to board.

9VAC5 CHAPTER 45
CONSUMER AND COMMERCIAL PRODUCTS

PART I
SPECIAL PROVISIONS

9VAC5-45-10. Applicability.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

A. The provisions of this chapter, unless specified otherwise, shall apply to:

1. Any product for which an emission standard or other requirement is prescribed under this chapter; and

2. Any owner or other person that engages in or permits an operation that is subject to the provisions of this chapter. Such operations may include, but are not limited to, the manufacture, packaging, distribution, marketing, application, sale or use, or contracting for the application, sale, or use, of the products specified in subdivision 1 of this subsection.

B. The provisions set forth in subdivisions 1 through 6 of this subsection, unless specified otherwise, shall not apply to any product or operation for which emission standards are prescribed under this chapter.

1. The provisions of 9VAC5-20-160 (Registration).

2. The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction).

3. The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) and Article 1 (9VAC5-50-60 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

4. The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) and Article 2 (9VAC5-50-130 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources).

5. The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) and Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

6. The provisions of Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources).

C. Nothing in this chapter shall be interpreted to exempt a stationary source from any provision of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), 9VAC5-60 (Hazardous Air Pollutant Sources) or 9VAC5-80 (Permits for Stationary Sources) that may apply.

D. Any owner or other person subject to the provisions of this chapter may provide any report, notification, or other document by electronic media if acceptable to

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

both the owner and board. ~~This subsection shall not apply to documents requiring signatures or certification under 9VAC5-20-230.~~

9VAC5-45-50. Notification, records and reporting.

A. Any owner or other person subject to the continuous monitoring provisions of 9VAC5-45-40 C shall provide written notifications to the board of the following:

1. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9VAC5-45-40 C. Notification shall be postmarked or submitted electronically or not less than 30 days prior to such date.

2. The date of any emission test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

3. The anticipated date for conducting the opacity observations required by 9VAC5-45-20 A 3. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during an emission test. The notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

B. Any owner or other person subject to the continuous monitoring provisions of 9VAC5-45-40 A shall maintain records of the occurrence and duration of any startup, shutdown, or malfunction of the operation subject to the provisions of an article under this chapter; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. Each owner or other person required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable emission standard) and either a monitoring systems performance report or a summary report form, or both, to the board semiannually, except when (i) more frequent reporting is specifically required by an applicable emission standard or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or (ii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All reports shall be postmarked or submitted electronically by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 9VAC5-40-41 B 6, any conversion factors used, and the date and time of commencement and completion of each period of excess emissions.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

2. The process operating time during the reporting period.
3. Specific identification of each period of excess emissions that occurs during startups, shutdowns and malfunctions of the source.
4. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.
5. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.
6. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

D. Any owner or other person subject to the continuous monitoring provisions of 9VAC5-45-40 or monitoring requirements of an article under this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and emission testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two years (unless a longer period is specified in the applicable standard) following the date of such measurements, maintenance, reports, and records.

E. Any data or information required by the Regulations for the Control and Abatement of Air Pollution, any permit or order of the board, or which the owner wishes the board to consider, to determine compliance with an emission standard shall be recorded or maintained in a time frame consistent with the averaging period of the standard.

F. Any owner or other person that is subject to the provisions of this chapter shall keep records as may be necessary to determine its emissions. Any owner or other person claiming that an operation or product is exempt from the provisions of the Regulations for the Control and Abatement of Air Pollution shall keep records as may be necessary to demonstrate to the satisfaction of the board its continued exempt status.

G. Unless otherwise specified by the provisions of an article under this chapter, all records required to determine compliance with the provisions of an article under this chapter shall be maintained by the owner or other person subject to such provision for

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

two years from the date such record is created and shall be made available to the board upon request.

H. Upon request of the board, the owner or other person subject to the provisions of this chapter shall provide notifications and report, revise reports, maintain records, or report emission test or monitoring results in a manner and form and using procedures acceptable to board.

I. Information submitted to the board to meet the requirements of this chapter shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

PART II. EMISSION STANDARDS.

ARTICLE 2. EMISSION STANDARDS FOR PORTABLE FUEL CONTAINERS AND SPOUTS MANUFACTURED ON OR AFTER AUGUST 1, 2010.

9VAC5-45-220. Administrative requirements.

A. Each manufacturer of a portable fuel container subject to and complying with 9VAC5-45-190 shall clearly display on each spill-proof system:

1. The phrase "Spill-Proof System";
2. A date of manufacture or representative date code; and
3. A representative code identifying either:

a. The portable fuel container as subject to and complying with 9VAC5-45-190; or

b. The effective CARB certification executive order issued for the portable fuel container.

B. Each manufacturer of a spout subject to and complying with 9VAC5-45-190 shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

1. The phrase "Spill-Proof Spout";

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

2. A date of manufacture or representative date code; and

3. A representative code identifying either:

a. The spout as subject to and complying with 9VAC5-45-190; or

b. The effective CARB certification executive order issued for the spout.

C. Each manufacturer subject to subsection A or B shall file an explanation of both the date code and representative code with the board no later than the later of three months after the effective date of this article or within three months of production, and within three months after any change in coding **upon request of the board**.

D. Each manufacturer of a spout subject to subsection B of this section shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate and for which the manufacturer can demonstrate the container's compliance with 9VAC5-45-190 on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

E. Manufacturers of portable fuel containers not subject to or not in compliance with 9VAC5-45-190 may not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout or on any sticker or label affixed thereto or on any accompanying package.

F. Each manufacturer of a portable fuel container or spout subject to and complying with 9VAC5-45-190 that due to its design or other features cannot be used to refuel on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater on each of the following:

1. For a portable fuel container sold as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

2. For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

ARTICLE 3.

EMISSION STANDARDS FOR CONSUMER PRODUCTS MANUFACTURED BEFORE
AUGUST 1, 2010.

9VAC5-45-320. Alternative control plan (ACP) for consumer products.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

A. 1. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

2. Only responsible ACP parties for consumer products may enter into an ACP agreement under the provisions of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names, and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement.

b. A statement of whether the responsible ACP party is a small business or a one-product business.

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP.

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall either demonstrate to the satisfaction of the board that other records provided to the board in writing by the responsible ACP party meet the minimum criteria of subdivision 1 d (5) of this subsection for tracking product sales of each ACP product, or do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

(4) Calculate the percentage of the gross sales that is composed of enforceable sales; and

(5) Determine which ACP products have enforceable sales that are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product;

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection.

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(4) For each ACP product, all VOC content levels that will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This demonstration shall use the equations specified in 9VAC5-45-300 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period.

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article.

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging.

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

(10) An operational plan ("reconciliation of shortfalls plan") that commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection C of this section, the board will issue an ACP agreement approving an ACP that meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9VAC5-45-310 A. The ACP shall also include:

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales as determined in subdivision 1 d (5) of this subsection;

(2) A reconciliation of shortfalls plan meeting the requirements of this article; and

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

C. Provisions follow concerning ACP approval time frames.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will normally act to approve or disapprove a complete application within 90 working days after the application is deemed complete. The board may extend this time period if additional information is needed.

2. Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

- ACP party,
- a. Immediately upon request, during an on-site visit to a responsible
 - b. Within five working days after receipt of a written request from
 - c. Within a time period mutually agreed upon by both the board and
- the board, or
- the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product that exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement within 30 working days from the date of written notification of a shortfall by the board; or

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

d. Failure to completely reconcile the shortfall as specified in the ACP agreement within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product as reported by the responsible ACP party for the applicable compliance period.

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows.

(1) For the missing data days, the board will calculate the total maximum historical emissions as specified in 9VAC5-45-300 C.

(2) For the remaining portion of the compliance period that are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period.

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions, determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection.

(4) The board will calculate the ACP limit for the entire compliance period using the ACP standards applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP\ emissions - ACP\ limit)}{40\ pounds}$$

where:

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates that establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9VAC5-45-310 A may not be used to generate surplus reductions.

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP.

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 2 of this section.

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

i. At least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party that is selling surplus reductions and the responsible ACP party that is buying the surplus reductions shall, either together or separately, notify the board in writing of the transfer. The notification shall include all of the following:

- (1) The date the transfer is to become effective.
- (2) The date the surplus reductions being traded are due to expire.
- (3) The amount (in pounds of VOCs) of surplus reductions that is being transferred.
- (4) The total purchase price paid by the buyer for the surplus reductions.
- (5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions.
- (6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining nontraded surplus reductions, if applicable, and shall show their expiration date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product that is reformulated to result in a reduction in the product's VOC content, and that is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

reformulated ACP products that are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product or below the applicable VOC standard specified in 9VAC 5-45-310 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section; and

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = \text{Enforceable Sales} \times \frac{((VOC \text{ Content})_{initial} - (VOC \text{ Content})_{final})}{100}$$

where:

SR = surplus reductions for the ACP product, expressed to the nearest pound.

Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.

VOC content_{initial} = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-45-310 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

VOC content_{final} = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and may not be used for another purpose;

(2) Limited use surplus reduction credits may not be transferred to, or used by, another responsible ACP party; and

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board.

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. Board pre-approval is not required for modifications that are a change to an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv)

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes, in writing, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

- a. The nature of the modification;
- b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;
- c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and
- d. The effective date and corresponding date-codes for the modification.

2. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP, however, such modifications require board pre-approval. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party that may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

2. If any applicable VOC standards specified in 9VAC5-45-310 A are modified by the board in a future rulemaking, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board, as provided in subsection H of this section;

c. The ACP is modified by the board as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9VAC5-45-310 A is modified by the board in a future rulemaking, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard; or

e. The ACP is cancelled pursuant to subdivision 2 of this subsection.

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship.

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more).

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170-40 A 2 and applicable provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9VAC5-45-310 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be cancelled or affected by the subsequent cancellation or modification of an ACP pursuant to subsection H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. Other information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

L. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked **or submitted electronically** at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations (see 9VAC5-20-21) may be exempt from Table 45-3A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emission credits within the CARB ACP agreement are contained in Table 45-3A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision for those ACP products in the areas specified in 9VAC5-45-280 C.

ARTICLE 4.

EMISSION STANDARDS FOR CONSUMER PRODUCTS MANUFACTURED ON OR AFTER AUGUST 1, 2010.

9VAC5-45-440. Alternative control plan (ACP) for consumer products.

A. 1. Manufacturers of consumer products may seek an ACP agreement in accordance with subsections B through L of this section.

2. Only responsible ACP parties for consumer products may enter into an ACP agreement under the provisions of this section.

B. Provisions follow concerning the requirements and process for approval of an ACP.

1. To be considered by the board for approval, an application for a proposed ACP shall be submitted in writing to the board by the responsible ACP party and shall contain all of the following:

a. An identification of the contact persons, phone numbers, names and addresses of the responsible ACP party that is submitting the ACP application and will be implementing the ACP requirements specified in the ACP agreement.

b. A statement of whether the responsible ACP party is a small business or a one-product business.

c. A listing of the exact product brand name, form, available variations (flavors, scents, colors, sizes, etc.), and applicable product category for each distinct ACP product that is proposed for inclusion in the ACP.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

d. For each proposed ACP product identified in subdivision 1 c of this subsection, a demonstration to the satisfaction of the board that the enforceable sales records to be used by the responsible ACP party for tracking product sales meet the minimum criteria specified in subdivision 1 d (5) of this subsection. To provide this demonstration, the responsible ACP party shall either demonstrate to the satisfaction of the board that other records provided to the board in writing by the responsible ACP party meet the minimum criteria of subdivision 1 d (5) of this subsection for tracking product sales of each ACP product, or do all of the following:

(1) Provide the contact persons, phone numbers, names, street and mail addresses of all persons and businesses who will provide information that will be used to determine the enforceable sales;

(2) Determine the enforceable sales of each product using enforceable sales records;

(3) Demonstrate, to the satisfaction of the board, the validity of the enforceable sales based on enforceable sales records provided by the contact persons or the responsible ACP party;

(4) Calculate the percentage of the gross sales that is composed of enforceable sales; and

(5) Determine which ACP products have enforceable sales that are 75% or more of the gross sales. Only ACP products meeting this criteria shall be allowed to be sold under an ACP.

e. For each of the ACP products identified in subdivision 1 d (5) of this subsection, the inclusion of the following:

(1) Legible copies of the existing labels for each product; and

(2) The VOC content and LVP content for each product. The VOC content and LVP content shall be reported for two different periods, as follows:

(a) The VOC and LVP contents of the product at the time the application for an ACP is submitted, and

(b) The VOC and LVP contents of the product that were used at any time within the four years prior to the date of submittal of the application for an ACP, if either the VOC or LVP contents have varied by more than plus or minus 10% of the VOC or LVP contents reported in subdivision 1 e (2) (a) of this subsection.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

f. A written commitment obligating the responsible ACP party to date-code every unit of each ACP product approved for inclusion in the ACP. The commitment shall require the responsible ACP party to display the date-code on each ACP product container or package no later than five working days after the date an ACP agreement approving an ACP is signed by the board.

g. An operational plan covering all the products identified under subdivision 1 d (5) of this subsection for each compliance period that the ACP will be in effect. The operational plan shall contain all of the following:

(1) An identification of the compliance periods and dates for the responsible ACP party to report the information required by the board in the ACP agreement approving an ACP. The length of the compliance period shall be chosen by the responsible ACP party (not to exceed 365 days). The responsible ACP party shall also choose the dates for reporting information such that all required VOC content and enforceable sales data for all ACP products shall be reported to the board at the same time and at the same frequency.

(2) An identification of specific enforceable sales records to be provided to the board for enforcing the provisions of this article and the ACP agreement approving an ACP. The enforceable sales records shall be provided to the board no later than the compliance period dates specified in subdivision 1 g (1) of this subsection.

(3) For a small business or a one-product business that will be relying to some extent on surplus trading to meet its ACP limits, a written commitment from the responsible ACP party that they will transfer the surplus reductions to the small business or one-product business upon approval of the ACP.

(4) For each ACP product, all VOC content levels that will be applicable for the ACP product during each compliance period. The plan shall also identify the specific method by which the VOC content will be determined and the statistical accuracy and precision (repeatability and reproducibility) will be calculated for each specified method.

(5) The projected enforceable sales for each ACP product at each different VOC content for every compliance period that the ACP will be in effect.

(6) A detailed demonstration showing the combination of specific ACP reformulations or surplus trading (if applicable) that is sufficient to ensure that the ACP emissions will not exceed the ACP limit for each compliance period that the ACP will be in effect, the approximate date within each compliance period that such reformulations or surplus trading are expected to occur, and the extent to which the VOC contents of the ACP products will be reduced (i.e., by ACP reformulation). This

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

demonstration shall use the equations specified in 9VAC5-45-420 C for projecting the ACP emissions and ACP limits during each compliance period. This demonstration shall also include all VOC content levels and projected enforceable sales for all ACP products to be sold during each compliance period.

(7) A certification that all reductions in the VOC content of a product will be real, actual reductions that do not result from changing product names, mischaracterizing ACP product reformulations that have occurred in the past, or other attempts to circumvent the provisions of this article.

(8) Written explanations of the date-codes that will be displayed on each ACP product's container or packaging.

(9) A statement of the approximate dates by which the responsible ACP party plans to meet the applicable ACP VOC standards for each product in the ACP.

(10) An operational plan ("reconciliation of shortfalls plan") that commits the responsible ACP party to completely reconcile shortfalls, even, to the extent permitted by law, if the responsible ACP party files for bankruptcy protection. The plan for reconciliation of shortfalls shall contain all of the following:

(a) A clear and convincing demonstration of how shortfalls of up to 5.0%, 10%, 15%, 25%, 50%, 75% and 100% of the applicable ACP limit will be completely reconciled within 90 working days from the date the shortfall is determined;

(b) A listing of the specific records and other information that will be necessary to verify that the shortfalls were reconciled as specified in this subsection; and

(c) A commitment to provide a record or information requested by the board to verify that the shortfalls have been completely reconciled.

h. A declaration, signed by a legal representative for the responsible ACP party, that states that all information and operational plans submitted with the ACP application are true and correct.

2. a. In accordance with the time periods specified in subsection C of this section, the board will issue an ACP agreement approving an ACP that meets the requirements of this article. The board will specify such terms and conditions as are necessary to ensure that the emissions from the ACP products do not exceed the emissions that would have occurred if the ACP products subject to the ACP had met the VOC standards specified in 9VAC5-45-430 A. The ACP shall also include:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

(1) Only those ACP products for which the enforceable sales are at least 75% of the gross sales as determined in subdivision 1 d (5) of this subsection;

(2) A reconciliation of shortfalls plan meeting the requirements of this article; and

(3) Operational terms, conditions, and data to be reported to the board to ensure that all requirements of this article are met.

b. The board will not approve an ACP submitted by a responsible ACP party if the board determines, upon review of the responsible ACP party's compliance history with past or current ACPs or the requirements for consumer products in this article, that the responsible ACP party has a recurring pattern of violations and has consistently refused to take the necessary steps to correct those violations.

C. Provisions follow concerning ACP approval time frames.

1. The board will take appropriate action on an ACP within the following time periods:

a. Within 30 working days of receipt of an ACP application, the board will inform the applicant in writing that either:

(1) The application is complete and accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

b. Within 30 working days of receipt of additional information provided in response to a determination that an ACP application is deficient, the board will inform the applicant in writing that either:

(1) The additional information is sufficient to make the application complete, and the application is accepted for filing, or

(2) The application is deficient, and identify the specific information required to make the application complete.

c. If the board finds that an application meets the requirements of subsection B of this section, then it shall issue an ACP agreement in accordance with the requirements of this article. The board will normally act to approve or disapprove a

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

complete application within 90 working days after the application is deemed complete. The board may extend this time period if additional information is needed.

2. Before the end of each time period specified in this section, the board and the responsible ACP party may mutually agree to a longer time period for the board to take the appropriate action.

D. Provisions follow concerning recordkeeping and availability of requested information.

1. All information specified in the ACP agreement approving an ACP shall be maintained by the responsible ACP party for a minimum of three years after such records are generated. Such records shall be clearly legible and maintained in good condition during this period.

2. The records specified in subdivision 1 of this subsection shall be made available to the board or its authorized representative:

a. Immediately upon request, during an on-site visit to a responsible ACP party,

b. Within five working days after receipt of a written request from the board, or

c. Within a time period mutually agreed upon by both the board and the responsible ACP party.

E. Provisions follow concerning violations.

1. Failure to meet a requirement of this article or a condition of an applicable ACP agreement shall constitute a single, separate violation of this article for each day until such requirement or condition is satisfied, except as otherwise provided in subdivisions 2 through 8 of this subsection.

2. False reporting of information in an ACP application or in any supporting documentation or amendments thereto shall constitute a single, separate violation of the requirements of this article for each day that the approved ACP is in effect.

3. An exceedance during the applicable compliance period of the VOC content specified for an ACP product in the ACP agreement approving an ACP shall constitute a single, separate violation of the requirements of this article for each ACP product that exceeds the specified VOC content that is sold, supplied, offered for sale, or manufactured for use.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

4. Any of the following actions shall each constitute a single, separate violation of the requirements of this article for each day after the applicable deadline until the requirement is satisfied:

a. Failure to report data or failure to report data accurately in writing to the board regarding the VOC content, LVP content, enforceable sales, or other information required by the deadline specified in the applicable ACP agreement;

b. False reporting of information submitted to the board for determining compliance with the ACP requirements;

c. Failure to completely implement the reconciliation of shortfalls plan that is set forth in the ACP agreement within 30 working days from the date of written notification of a shortfall by the board; or

d. Failure to completely reconcile the shortfall as specified in the ACP agreement within 90 working days from the date of written notification of a shortfall by the board.

5. False reporting or failure to report any of the information specified in subdivision F 2 i of this section or the sale or transfer of invalid surplus reductions shall constitute a single, separate violation of the requirements of this article for each day during the time period for which the surplus reductions are claimed to be valid.

6. Except as provided in subdivision 7 of this subsection, an exceedance of the ACP limit for a compliance period that the ACP is in effect shall constitute a single, separate violation of the requirements of this article for each day of the applicable compliance period. The board will determine whether an exceedance of the ACP limit has occurred as follows:

a. If the responsible ACP party has provided all required information for the applicable compliance period specified in the ACP agreement approving an ACP, then the board will determine whether an exceedance has occurred using the enforceable sales records and VOC content for each ACP product, as reported by the responsible ACP party for the applicable compliance period.

b. If the responsible ACP party has failed to provide all the required information specified in the ACP agreement for an applicable compliance period, the board will determine whether an exceedance of the ACP limit has occurred as follows:

(1) For the missing data days, the board will calculate the total maximum historical emissions as specified in 9VAC5-45-420 C.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

(2) For the remaining portion of the compliance period that are not missing data days, the board will calculate the emissions for each ACP product using the enforceable sales records and VOC content that were reported for that portion of the applicable compliance period.

(3) The ACP emissions for the entire compliance period shall be the sum of the total maximum historical emissions determined pursuant to subdivision 6 b (1) of this subsection, and the emissions determined pursuant to subdivision 6 b (2) of this subsection.

(4) The board will calculate the ACP limit for the entire compliance period using the ACP standards applicable to each ACP product and the enforceable sales records specified in subdivision 6 b (2) of this subsection. The enforceable sales for each ACP product during missing data days, as specified in subdivision 6 b (1) of this subsection, shall be zero.

(5) An exceedance of the ACP limit has occurred when the ACP emissions, determined pursuant to subdivision 6 b (3) of this subsection, exceeds the ACP limit, determined pursuant to subdivision 6 b (4) of this subsection.

7. If a violation specified in subdivision 6 of this subsection occurs, the responsible ACP party may, pursuant to this subdivision, establish the number of violations as calculated according to the following equation:

$$NEV = \frac{(ACP\ emissions - ACP\ limit)}{40\ pounds}$$

where:

NEV = number of ACP limit violations.

ACP emissions = the ACP emissions for the compliance period.

ACP limit = the ACP limit for the compliance period.

40 pounds = number of pounds of emissions equivalent to one violation.

The responsible ACP party may determine the number of ACP limit violations pursuant to this subdivision only if it has provided all required information for the applicable compliance period, as specified in the ACP agreement approving the ACP. By choosing this option, the responsible ACP party waives all legal objections to the calculation of the ACP limit violations pursuant to this subdivision.

8. A cause of action against a responsible ACP party under this section shall be deemed to accrue on the date when the records establishing a violation are received by the board.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

9. The responsible ACP party is fully liable for compliance with the requirements of this article, even if the responsible ACP party contracts with or otherwise relies on another person to carry out some or all of the requirements of this article.

F. Provisions follow concerning surplus reductions and surplus trading.

1. The board will issue surplus reduction certificates that establish and quantify, to the nearest pound of VOC reduced, the surplus reductions achieved by a responsible ACP party operating under an ACP. The surplus reductions can be bought from, sold to, or transferred to a responsible ACP party operating under an ACP, as provided in subdivision 2 of this subsection. All surplus reductions shall be calculated by the board at the end of each compliance period within the time specified in the approved ACP. Surplus reduction certificates shall not constitute instruments, securities, or another form of property.

2. The issuance, use, and trading of all surplus reductions shall be subject to the following provisions:

a. For the purposes of this article, VOC reductions from sources of VOCs other than consumer products subject to the VOC standards specified in 9VAC5-45-430 A may not be used to generate surplus reductions.

b. Surplus reductions are valid only when generated by a responsible ACP party and only while that responsible ACP party is operating under an approved ACP.

c. Surplus reductions are valid only after the board has issued an ACP agreement pursuant to subdivision 1 of this subsection.

d. Surplus reductions issued by the board may be used by the responsible ACP party who generated the surplus until the reductions expire, are traded, or until the ACP is canceled pursuant to subdivision J 2 of this section.

e. Surplus reductions cannot be applied retroactively to a compliance period prior to the compliance period in which the reductions were generated.

f. Except as provided in subdivision 2 g (2) of this subsection, only small or one-product businesses selling products under an approved ACP may purchase surplus reductions. An increase in the size of a small business or one-product business shall have no effect on surplus reductions purchased by that business prior to the date of the increase.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

g. While valid, surplus reductions can be used only for the following purposes:

(1) To adjust the ACP emissions of either the responsible ACP party who generated the reductions or the responsible ACP party to which the reductions were traded, provided the surplus reductions are not to be used by a responsible ACP party to further lower its ACP emissions when its ACP emissions are equal to or less than the ACP limit during the applicable compliance period; or

(2) To be traded for the purpose of reconciling another responsible ACP party's shortfalls, provided such reconciliation is part of the reconciliation of shortfalls plan approved by the board pursuant to subdivision B 1 g (10) of this section.

h. A valid surplus reduction shall be in effect starting five days after the date of issuance by the board for a continuous period equal to the number of days in the compliance period during which the surplus reduction was generated. The surplus reduction shall then expire at the end of its effective period.

i. At least five working days prior to the effective date of transfer of surplus reductions, both the responsible ACP party that is selling surplus reductions and the responsible ACP party that is buying the surplus reductions shall, either together or separately, notify the board in writing of the transfer. The notification shall include all of the following:

(1) The date the transfer is to become effective.

(2) The date the surplus reductions being traded are due to expire.

(3) The amount (in pounds of VOCs) of surplus reductions that are being transferred.

(4) The total purchase price paid by the buyer for the surplus reductions.

(5) The contact persons, names of the companies, street and mail addresses, and phone numbers of the responsible ACP parties involved in the trading of the surplus reductions.

(6) A copy of the board-issued surplus reductions certificate, signed by both the seller and buyer of the certificate, showing transfer of all or a specified portion of the surplus reductions. The copy shall show the amount of any remaining nontraded surplus reductions, if applicable, and shall show their expiration

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

date. The copy shall indicate that both the buyer and seller of the surplus reductions fully understand the conditions and limitations placed upon the transfer of the surplus reductions and accept full responsibility for the appropriate use of such surplus reductions as provided in this section.

j. Surplus reduction credits shall only be traded between ACP products.

3. Provisions follow concerning limited-use surplus reduction credits for early reformulations of ACP products.

a. For the purposes of this subdivision, "early reformulation" means an ACP product that is reformulated to result in a reduction in the product's VOC content, and that is sold, supplied, or offered for sale for the first time during the one-year (365 day) period immediately prior to the date on which the application for a proposed ACP is submitted to the board. Early reformulation does not include reformulated ACP products that are sold, supplied, or offered for sale more than one year prior to the date on which the ACP application is submitted to the board.

b. If requested in the application for a proposed ACP, the board will, upon approval of the ACP, issue surplus reduction credits for early reformulation of ACP products, provided that all of the following documentation has been provided by the responsible ACP party to the satisfaction of the board:

(1) Accurate documentation showing that the early reformulation reduced the VOC content of the ACP product to a level that is below the pre-ACP VOC content of the product or below the applicable VOC standard specified in 9VAC 5-45-430 A, whichever is the lesser of the two;

(2) Accurate documentation demonstrating that the early reformulated ACP product was sold in retail outlets within the time period specified in subdivision 3 a of this subsection;

(3) Accurate sales records for the early reformulated ACP product that meet the definition of enforceable sales records and that demonstrate that the enforceable sales for the ACP product are at least 75% of the gross sales for the product, as specified in subdivision B 1 d of this section; and

(4) Accurate documentation for the early reformulated ACP product that meets the requirements specified in subdivisions B 1 c and d and B 1 g (7) and (8) of this section and that identifies the specific test methods for verifying the claimed early reformulation and the statistical accuracy and precision of the test methods as specified in subdivision B 1 g (4) of this section.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

c. Surplus reduction credits issued pursuant to this subsection shall be calculated separately for each early reformulated ACP product by the board according to the following equation:

$$SR = \text{Enforceable Sales} \times \frac{((VOC \text{ Content})_{initial} - (VOC \text{ Content})_{final})}{100}$$

where:

SR = surplus reductions for the ACP product, expressed to the nearest pound.
Enforceable sales = the enforceable sales for the early reformulated ACP product, expressed to the nearest pound of ACP product.
VOC content_{initial} = the pre-ACP VOC content of the ACP product, or the applicable VOC standard specified in 9VAC5-45-430 A, whichever is the lesser of the two, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.
VOC content_{final} = the VOC content of the early reformulated ACP product after the early reformulation is achieved, expressed to the nearest 0.1 pounds of VOC per 100 pounds of ACP product.

d. The use of limited use surplus reduction credits issued pursuant to this subdivision shall be subject to all of the following provisions:

(1) Limited use surplus reduction credits shall be used solely to reconcile the responsible ACP party's shortfalls, if any, generated during the first compliance period occurring immediately after the issuance of the ACP agreement approving an ACP, and may not be used for another purpose;

(2) Limited use surplus reduction credits may not be transferred to, or used by, another responsible ACP party; and

(3) Except as provided in this subdivision, limited use surplus reduction credits shall be subject to all requirements applicable to surplus reductions and surplus trading as specified in subdivisions 1 and 2 of this subsection.

G. Provisions follow concerning the reconciliation of shortfalls.

1. At the end of each compliance period, the responsible ACP party shall make an initial calculation of shortfalls occurring in that compliance period as specified in the ACP agreement approving the ACP. Upon receipt of this information, the board will determine the amount of a shortfall that has occurred during the compliance period and shall notify the responsible ACP party of this determination.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

2. The responsible ACP party shall implement the reconciliation of shortfalls plan as specified in the ACP agreement approving the ACP within 30 working days from the date of written notification of a shortfall by the board.

3. All shortfalls shall be completely reconciled within 90 working days from the date of written notification of a shortfall by the board by implementing the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP.

4. All requirements specified in the ACP agreement approving an ACP, including all applicable ACP limits, shall remain in effect while shortfalls are in the process of being reconciled.

H. Provisions follow concerning the notification of modifications to an ACP by the responsible ACP party.

1. Board pre-approval is not required for modifications that are a change to an ACP product's: (i) product name, (ii) product formulation, (iii) product form, (iv) product function, (v) applicable product category, (vi) VOC content, (vii) LVP content, (viii) date-codes, or (ix) recommended product usage directions. The responsible ACP party shall notify the board of such changes, in writing, no later than 15 working days from the date such a change occurs. For each modification, the notification shall fully explain the following:

- a. The nature of the modification;
- b. The extent to which the ACP product formulation, VOC content, LVP content, or recommended usage directions will be changed;
- c. The extent to which the ACP emissions and ACP limit specified in the ACP agreement will be changed for the applicable compliance period; and
- d. The effective date and corresponding date-codes for the modification.

2. The responsible ACP party may propose modifications to the enforceable sales records or the reconciliation of shortfalls plan specified in the ACP agreement approving the ACP, however, such modifications require board pre-approval. Any such proposed modifications shall be fully described in writing and forwarded to the board. The responsible ACP party shall clearly demonstrate that the proposed modifications will meet the requirements of this article. The board will act on the proposed modifications using the procedure set forth in subsection C of this section. The responsible ACP party shall meet all applicable requirements of the existing ACP until such time as a proposed modification is approved in writing by the board.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

3. Except as otherwise provided in subdivisions 1 and 2 of this subsection, the responsible ACP party shall notify the board, in writing, of information known by the responsible ACP party that may alter the information submitted pursuant to the requirements of subsection B of this section. The responsible ACP party shall provide such notification to the board no later than 15 working days from the date such information is known to the responsible ACP party.

I. Provisions follow concerning the modification of an ACP by the board.

1. If the board determines that: (i) the enforceable sales for an ACP product are no longer at least 75% of the gross sales for that product, (ii) the information submitted pursuant to the approval process set forth in subsection C of this section is no longer valid, or (iii) the ACP emissions are exceeding the ACP limit specified in the ACP agreement approving an ACP, then the board will modify the ACP as necessary to ensure that the ACP meets all requirements of this article and that the ACP emissions will not exceed the ACP limit.

2. If any applicable VOC standards specified in 9VAC5-45-430 A are modified by the board in a future rule-making, the board will modify the ACP limit specified in the ACP agreement approving an ACP to reflect the modified ACP VOC standards as of their effective dates.

J. Provisions follow concerning the cancellation of an ACP.

1. An ACP shall remain in effect until:

a. The ACP reaches the expiration date specified in the ACP agreement;

b. The ACP is modified by the responsible ACP party and approved by the board as provided in subsection H of this section;

c. The ACP is modified by the board as provided in subsection I of this section;

d. The ACP includes a product for which the VOC standard specified in 9VAC5-45-430 A is modified by the board in a future rule-making, and the responsible ACP party informs the board in writing that the ACP will terminate on the effective date of the modified standard; or

e. The ACP is cancelled pursuant to subdivision 2 of this subsection.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

2. The board will cancel an ACP if any of the following circumstances occur:

a. The responsible ACP party demonstrates to the satisfaction of the board that the continuation of the ACP will result in an extraordinary economic hardship.

b. The responsible ACP party violates the requirements of the approved ACP, and the violation results in a shortfall that is 20% or more of the applicable ACP limit (i.e., the ACP emissions exceed the ACP limit by 20% or more).

c. The responsible ACP party fails to meet the requirements of subsection G of this section within the time periods specified in that subsection.

d. The responsible ACP party has demonstrated a recurring pattern of violations and has consistently failed to take the necessary steps to correct those violations.

3. Cancellations of ACPs are considered case decisions and will be processed using the procedures prescribed in 9VAC5-170-40 A 2 and applicable provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

4. The responsible ACP party for an ACP that is canceled pursuant to this section and who does not have a valid ACP to immediately replace the canceled ACP shall meet all of the following requirements:

a. All remaining shortfalls in effect at the time of ACP cancellation shall be reconciled in accordance with the requirements of subsection G of this section, and

b. All ACP products subject to the ACP shall be in compliance with the applicable VOC standards in 9VAC5-45-430 A immediately upon the effective date of ACP cancellation.

5. Violations incurred pursuant to subsection E of this section shall not be cancelled or affected by the subsequent cancellation or modification of an ACP pursuant to subsection H, I, or J of this section.

K. The information required by subdivisions B 1 a and b and F 2 i of this section is public information that may not be claimed as confidential. Other information submitted to the board to meet the requirements of this section shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-60 C, in which

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

case the information shall be handled in accordance with the procedures specified in §§ 10.1-1314 and 10.1-1314.1 of the Air Pollution Control Law of Virginia.

L. A responsible ACP party may transfer an ACP to another responsible ACP party, provided that all of the following conditions are met:

1. The board will be notified, in writing, by both responsible ACP parties participating in the transfer of the ACP and its associated ACP agreement. The written notifications shall be postmarked **or submitted electronically** at least five working days prior to the effective date of the transfer and shall be signed and submitted separately by both responsible parties. The written notifications shall clearly identify the contact persons, business names, mail and street addresses, and phone numbers of the responsible parties involved in the transfer.

2. The responsible ACP party to which the ACP is being transferred shall provide a written declaration stating that the transferee shall fully comply with all requirements of the ACP agreement approving the ACP and this article.

M. In approving agreements under subsections B through L of this section, the board will take into consideration whether the applicant has been granted an ACP by CARB. A manufacturer of consumer products that has been granted an ACP agreement by the CARB under the provisions in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the California Code of Regulations (see 9VAC5-20-21) may be exempt from Table 45-4A for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emission credits within the CARB ACP agreement are contained in Table 45-4A. A manufacturer claiming such an ACP agreement on this basis must submit to the board a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption and certification that the manufacturer will comply with the CARB ACP decision for those ACP products in the areas specified in 9VAC5-45-400 B.

ARTICLE 5.
EMISSION STANDARDS FOR ARCHITECTURAL AND INDUSTRIAL
MAINTENANCE COATINGS.

9VAC5-45-560. Administrative requirements.

Each manufacturer of any architectural coatings subject to this article shall display the information listed in subdivisions 1 through 8 of this section on the coating container (or label) in which the coating is sold or distributed.

1. The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid, or bottom of the container. If the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the board upon request by the board.

2. A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the container. This requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation shall specify that the coating is to be applied without thinning.

3. Each container of any coating subject to this article shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated using product formulation data, or shall be determined using the test methods in 9VAC5-45-590 C. The equations in 9VAC5-45-590 B shall be used to calculate VOC content.

4. In addition to the information specified in subdivisions 1, 2, and 3 of this section, each manufacturer of any industrial maintenance coating subject to this article shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the descriptions listed in this subdivision.

- a. "For industrial use only."
- b. "For professional use only."
- c. "Not for residential use" or "Not intended for residential use."

5. The labels of all clear brushing lacquers shall prominently display the statements "For brush application only," and "This product shall not be thinned or sprayed."

6. The labels of all rust preventive coatings shall prominently display the statement "For Metal Substrates Only."

7. The labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the descriptions listed in this subdivision.

- a. For blocking stains.
- b. For fire-damaged substrates.
- c. For smoke-damaged substrates.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

- d. For water-damaged substrates.
 - e. For excessively chalky substrates.
8. The labels of all quick dry enamels shall prominently display the words "Quick Dry" and the dry hard time.
9. The labels of all nonflat high-gloss coatings shall prominently display the words "High Gloss."

9VAC5 CHAPTER 50
NEW AND MODIFIED STATIONARY SOURCES

PART I
SPECIAL PROVISIONS

9VAC5-50-10. Applicability.

- A. The provisions of this chapter, unless specified otherwise, shall apply to new and modified sources.
- B. The provisions of this chapter shall apply to sources specified below except as provided in 9VAC5-40-10 B:
- 1. Any stationary source (or portion of it), the construction, modification or relocation of which commenced on or after March 17, 1972.
 - 2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.
- C. If a facility becomes subject to any requirement in the Regulations for the Control and Abatement of Air Pollution because it exceeds an exemption level, the facility shall continue to be subject to all applicable requirements even if future conditions cause the facility to fall below the exemption level.
- D. The provisions of 9VAC5 Chapter 40 (9VAC5-40-10 et seq.), unless specified otherwise, shall apply to new and modified sources to the extent that those provisions thereof are more restrictive than the provisions of this chapter, 9VAC5 Chapter 80 (9VAC5-80-10 et seq.), or any permit issued pursuant to 9VAC5 Chapter 80 (9VAC5-80-10 et seq.).
- E. For sources subject to the applicable subparts listed in 9VAC5-50-410, the provisions of 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 and 40 CFR 60.13 shall be implemented through this part. In cases where there are differences between the

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

provisions of this part and the provisions of 40 CFR Part 60, the more restrictive provisions shall apply.

F. Any owner subject to the provisions of this chapter may provide any report, notification or other document by electronic media if acceptable to both the owner and board. ~~This subsection shall not apply to documents requiring signatures or certification under 9VAC5-20-230.~~

9VAC5-50-50. Notification, records and reporting.

A. Any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date of commencement of construction, reconstruction or modification of a new or modified source postmarked or submitted electronically no later than 30 days after such date.

2. The anticipated date of initial startup of a new or modified source postmarked or submitted electronically not more than 60 days nor less than 30 days prior to such date.

3. The actual date of initial startup of a new or modified source postmarked or submitted electronically within 15 days after such date.

4. The date of any performance test required by 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) and any other performance test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

5. The date upon which demonstration of the continuous monitoring system performance begins in accordance with 9VAC5-50-40 C. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

6. The anticipated date for conducting the opacity observations required by 9VAC5-50-20 G 1. The notification shall also include, if appropriate, a request for the board to provide a visible emissions reader during a performance test. The notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

B. Any owner of a new or modified source subject to the provisions of 9VAC5-50-40 A shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of such source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

C. Each owner required to install a continuous monitoring system (CMS) or monitoring device shall submit a written report of excess emissions (as defined in the applicable subpart in 9VAC5-50-410) and either a monitoring systems performance report or a summary report form, or both, to the board semiannually, except when (i) more frequent reporting is specifically required by an applicable subpart listed in 9VAC5-50-410 or the CMS data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or (ii) the board, on a case-by-case basis, determines that more frequent reporting is necessary to accurately assess the compliance status of the source. The summary report and form shall meet the requirements of 40 CFR 60.7(d). The frequency of reporting requirements may be reduced as provided in 40 CFR 60.7(e). All reports shall be postmarked **or submitted electronically** by the 30th day following the end of each calendar half (or quarter, as appropriate). Written reports of excess emissions shall include the following information:

1. The magnitude of excess emissions computed in accordance with 40 CFR 60.13(h), any conversion factors used, and the date and time of commencement and completion of each period of excess emissions. The process operating time during the reporting period.

2. Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the source. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

3. The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments.

4. When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in the report.

D. Any owner of a new or modified source subject to the provisions of this chapter shall maintain a file of all measurements, including continuous monitoring system, monitoring device, and performance testing measurements; all continuous monitoring system performance evaluations; all continuous monitoring system or monitoring device calibration checks; adjustments and maintenance performed on these systems or devices; and all other information required by this chapter recorded in a permanent form suitable for inspection. The file shall be retained for at least two years (unless a longer period is specified in the applicable standard) following the date of such measurements, maintenance, reports and records.

E. Any data or information required by the Regulations for the Control and Abatement of Air Pollution, any permit or order of the board, or which the owner wishes

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

the board to consider, to determine compliance with an emission standard shall be recorded or maintained in a time frame consistent with the averaging period of the standard.

F. The owner of a stationary source shall keep records as necessary to determine its emissions. Any owner claiming that a facility is exempt from the provisions of the Regulations for the Control and Abatement of Air Pollution shall keep records to demonstrate its continued exempt status.

G. The owner of a new or modified source subject to any volatile organic compound emission standard for a coating operation or printing process shall maintain records in accordance with the applicable procedure in 9VAC5-20-121.

H. Upon request of the board, the owner of a new or modified source subject to the provisions of this chapter shall provide notifications and reports, maintain records or report performance test or monitoring results in a manner and form and using procedures acceptable to the board.

9VAC5 CHAPTER 60.
HAZARDOUS AIR POLLUTANT SOURCES.

PART I.
SPECIAL PROVISIONS.

9VAC5-60-10. Applicability.

A. The provisions of this chapter shall apply to all existing, new and modified hazardous air pollutant sources for which emission standards are prescribed under this chapter.

B. For sources subject to the applicable subparts listed in 9VAC5-60-70, the provisions of 40 CFR 61.09, 40 CFR 61.10, 40 CFR 61.12, 40 CFR 61.13, and 40 CFR 61.14 shall be implemented through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 61, the more restrictive provisions shall apply.

C. For sources subject to the applicable subparts listed in 9VAC5-60-100, the provisions of 40 CFR 63.6, 40 CFR 63.7, 40 CFR 63.8, 40 CFR 63.9, 40 CFR 63.10 and 40 CFR 63.11 shall be implemented through this part. In cases where there are differences between the provisions of this part and the provisions of 40 CFR Part 63, the more restrictive provisions shall apply.

D. Any owner subject to the provisions of this chapter may provide any report, notification or other document by electronic media if acceptable to both the owner and

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

board. ~~This subsection shall not apply to documents requiring signatures or certification under 9VAC5-20-230.~~

9VAC5-60-50. Notification, records and reporting.

A. Any owner of a hazardous air pollutant source subject to the provisions of this chapter shall provide written notifications to the board of the following:

1. The date of commencement of construction, reconstruction or modification of a new or modified hazardous air pollutant source postmarked or submitted electronically no later than 30 days after such date.

2. The anticipated date of initial startup of any new or modified hazardous air pollutant source not more than 60 days or less than 30 days prior to such date.

3. The actual date of initial startup of any new or modified hazardous air pollutant source within 15 days after such date.

4. The date of any emission test the owner wishes the board to consider in determining compliance with a standard. Notification shall be postmarked or submitted electronically not less than 30 days prior to such date.

B. Any owner of a hazardous air pollutant source subject to the provisions of subparts listed in 9VAC5-60-70 shall maintain records of the occurrence and duration of any startup, shutdown or malfunction in the operation of a hazardous air pollutant source; any malfunction in the operation of a hazardous air pollutant source; any malfunction of the air pollution control equipment; or any periods during which a continuous monitoring system or monitoring device is inoperative.

C. The owner of any existing hazardous air pollutant source or any new or modified hazardous air pollutant source to which an emission standard prescribed under the subparts listed in 9VAC5-60-70 is applicable which has an initial startup which preceded the effective date of an emission standard prescribed under this chapter shall, within 90 days after the effective date, provide the following information in writing to the board:

1. Name and address of the owner;

2. The location of the source;

3. The type of hazardous air pollutants emitted by the source;

4. A brief description of the nature, size, design and method of operation of the source including the operating design capacity of such source. Identify each point of emission for each hazardous air pollutant;

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

5. The average weight per month of the hazardous materials being processed by the source, over the last 12 months preceding the date of the report;

6. A description of the existing control equipment for each emission point;

- a. Primary control devices for each hazardous air pollutant.
- b. Secondary control devices for each hazardous air pollutant.
- c. Estimated control efficiency (percent) for each control device.

7. A statement by the owner of the source as to whether he can comply with the emission standards prescribed in this chapter within 90 days of the effective date.

D. Changes in the information provided under subsection C of this section shall be provided to the board within 30 days after such change, except that, if the changes result from modification of the source, the provisions of 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) are applicable.

E. Reporting under this section shall be according to procedures acceptable to the board. Advice on reporting the status of compliance may be obtained from the board.

F. Upon request of the board, the owner of a hazardous air pollutant source subject to the provisions of this chapter shall provide notifications and reports, revise reports, maintain records or report emission test or monitoring results in a manner and form and using procedures acceptable to the board.

9VAC5 CHAPTER 80 PERMITS FOR STATIONARY SOURCES

PART II Permit Procedures

ARTICLE 2 PERMIT PROGRAM EMISSIONS FEES FOR STATIONARY SOURCES

9VAC5-80-350. Annual permit program emissions fee payment.

A. Upon determining that the owner owes an annual permit program emissions fee, the department shall mail a bill for the fee to that owner no later than August 1 unless the governor determines that fees are needed earlier for Virginia to maintain primacy over the program, as provided in § 10.1322 B of the Virginia Air Pollution Control Law.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

B. Within 30 days following the date of the postmark **or electronic submittal** on the bill, the owner shall respond in one of the following ways:

1. The owner may pay the fee in full.

2. The owner may pay the fee in equal quarterly payments and shall pay one quarter of the fee. The first payment shall be accompanied by a written statement that the second quarter of the fee shall be paid no later than December 1 of the year of the issuance of the bill, the third quarter of the fee shall be paid no later than March 1 of the year following the issuance of the bill, and the fourth quarter of the fee shall be paid no later than June 1 of the year following the issuance of the bill. If an owner fails to pay a quarterly payment by the deadline, the department may, in addition to other remedies available under the law, issue to the owner a notice of failure to pay. The notice will require payment of the entire remainder of the annual fee payment within 30 days of the date of the notice, or inform the owner that the owner is ineligible to opt for the quarterly payment schedule established in this subdivision until eligibility is reinstated by written notice from the department, or both.

3. The owner may request that the fee amount be revised if the owner can document that the emissions estimate on which the fee was based is in error. This request shall include appropriate source identification data, the revised emissions estimate, the revised fee amount, adequate supporting documentation, and other information as the department may require. The owner shall file the request with the appropriate regional office in a form acceptable to the department. If the department approves the request, the revised fee amount shall be paid in one of two ways:

a. In full within 30 days of the date of approval; or

b. In quarterly payments, with the first payment being paid within 30 days of the date of approval and the other payments being paid according to the schedule set out in subdivision 2 of this subsection.

C. The annual permit program emissions fee shall be paid by check, draft, or money order made payable to the Treasurer of Virginia and mailed to the address specified by the department.

ARTICLE 6. PERMITS FOR NEW AND MODIFIED STATIONARY SOURCES.

9VAC5-80-1105. Permit exemptions.

A. The general requirements for minor NSR permit exemptions are as follows:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section. In determining whether a source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D of this section taken as a group and under the provisions of subsections E and F of this section to be exempt from this article.

b. Vegetative waste recycling/mulching operations that do not exceed 2100 hours of operation in any 12-month consecutive period at a single stationary source. To qualify as an exemption under this subdivision, the total rated capacity of all diesel engines at the source, including portable diesel engines temporarily located at the site, may not exceed 1200 brake horsepower (output).

c. The location of a portable emissions unit at a site subject to the following conditions:

(1) Any new emissions from the portable emissions unit are secondary emissions.

(2) The portable emissions unit is either subject to (i) a minor NSR permit authorizing the emissions unit as a portable emissions unit subject to this subdivision or (ii) a general permit.

(3) The emissions of the portable emissions unit at the site would be temporary.

(4) The portable emissions unit would not undergo modification or replacement that would be subject to this article.

(5) The portable emissions unit is suitable to the area in which it is to be located.

(6) Reasonable notice is given to the department prior to locating the emissions unit to the site identifying the proposed site and the probable duration of operation at the site. Such notice shall be provided to the department not less than 15 days prior to the date the emissions unit is to be located at the site unless a different notification schedule is previously approved by the department.

d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9VAC5-20-220.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

e. The use by any existing stationary source or emissions unit of an alternative fuel or raw material, if the following conditions are met:

(1) The owner demonstrates to the department that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will 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.

(2) The use of an alternative fuel or raw material would not be subject to review under this article as a project.

2. The provisions of this article do not apply to the following stationary sources or emissions units provided the stationary source or emissions unit is (i) exempt under the provisions of subsections E and F of this section and (ii) meets any other applicable criteria or conditions set forth in this subdivision.

a. Replacement of an emissions unit subject to the following criteria:

(1) The replacement emission unit is (i) of an equal or lesser size and (ii) of an equal or lesser rated capacity as compared to the replaced emissions unit.

(2) The replacement emissions unit is functionally equivalent to the replaced emissions unit.

(3) The replacement emissions unit does not change the basic design parameters of the process operation.

(4) The potential to emit of the replacement emissions unit does not exceed the potential to emit of the replaced emissions unit. If the replaced emissions unit is subject to terms and conditions contained in a minor NSR permit, the owner may, concurrently with the notification required in subdivision (6) of this subdivision, request a minor amendment as provided in 9VAC5-80-1280 B 4 to that permit to apply those terms and conditions to the replacement emissions unit. However, the replacement emissions unit's potential to emit is not limited for the purposes of this subdivision unless (and until) the requested minor permit amendment is granted by the department.

(5) The replaced emissions unit is either removed or permanently shut down in accordance with the provisions of 9VAC5-20-220.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

(6) The owner notifies the department, in writing, of the proposed replacement at least 15 days prior to commencing construction on the replacement emissions unit. Such notification shall include the size, function, and rated capacity of the existing and replacement emissions units and the registration number of the affected stationary source.

b. A reduction in stack outlet elevation provided that the stack serves only facilities that have been previously determined to be exempt from the minor NSR program.

3. In determining whether a facility is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9VAC5-40 (Existing Stationary Sources) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the department.

4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the department that the facility was exempt at the time a minor NSR permit would have otherwise been required under this article.

B. Facilities as specified below shall be exempt from the provisions of this article.

1. Fuel burning equipment units (external combustion units, not engines and turbines) and space heaters in a single application as follows:

a. Except as provided in subdivision b of this subdivision, the exemption thresholds in subdivisions (1) through (4) of this subdivision shall be applied on an individual unit basis for each fuel type.

(1) Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

(2) Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(3) Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(4) Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour.

b. In ozone nonattainment areas designated in 9VAC5-20-204 or ozone maintenance areas designated in 9VAC5-20-203, the exemption thresholds in subdivision a of this subdivision shall be applied in the aggregate for each fuel type.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

2. Engines and turbines that are used for emergency purposes only and that do not individually exceed 500 hours of operation per year at a single stationary source as follows. All engines and turbines in a single application must also meet the following criteria to be exempt.

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair or testing.

4. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations involving:

(1) Any tank of 2,000 gallons or less storage capacity; or

(2) Any operation outside the volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Volatile organic compound storage operations involving any tank of 40,000 gallons or less storage capacity.

5. Vehicle customizing coating operations, if production is less than 20 vehicles per day.

6. Vehicle refinishing operations.

7. Coating operations for the exterior of fully assembled aircraft or marine vessels.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

8. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and any operation or facility specified below:

a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Gasoline dispensing facilities.

c. Gasoline bulk loading operations at bulk plants:

(1) With an expected daily throughput of less than 4,000 gallons, or

(2) Located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations involving:

(1) Any tank of 40,000 gallons or less storage capacity;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) Any tank storing waxy, heavy pour crude oil.

9. Petroleum dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9VAC5-50-410.

10. Any addition of, relocation of, or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.

12. Exhaust flares at natural gas and coalbed methane extraction wells.

13. Temporary facilities subject to the following conditions:

a. The operational period of the temporary facility (the period from the date that the first pollutant-emitting operation is commenced to the date of shutdown of the temporary facility) is 12 months or less.

b. The uncontrolled emissions rate of any regulated air pollutant that would be emitted from the temporary facility during the operational period does not exceed the applicable exempt emission rate as set forth in 9VAC5-80-1105 C (exemption rates for new stationary sources) or 9VAC5-80-1105 D (exemption rates for projects). The uncontrolled emission rate may be calculated based upon the total number of hours in the operational period instead of 8760 hours. All temporary facilities that will be co-located at a stationary source shall be considered in the aggregate when calculating the uncontrolled emissions rate under this subdivision.

c. Upon completion of the operational period, the temporary facility shall be either (i) shut down in accordance with 9VAC5-20-220 or (ii) returned to its original state and condition unless, prior to the end of the operational period, the owner demonstrates in writing to the satisfaction of the department that the facility is exempt under 9VAC5-80-1105 C (exemption rates for new stationary sources) or D (exemption rates for new stationary projects) using 8760 hours of operation per year.

d. Not less than 30 calendar days prior to commencing the operational period, the owner shall notify the department in writing of the proposed temporary facility and shall provide (i) calculations demonstrating that the temporary facility is exempt under this subdivision and under 9VAC5-80-1105 E and F and (ii) proposed dates for commencing the first pollutant-emitting operation and shutdown of the temporary facility.

e. The owner shall provide written notifications to the department of (i) the actual date of commencing the first pollutant-emitting operation and (ii) the actual date

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

of shutdown of the temporary facility. Notifications shall be postmarked **or electronically submitted** not more than 10 days after such dates.

14. Open pit incinerators subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the purpose of disposal of clean burning waste and debris waste.

15. Poultry or swine incinerators located on a farm where all of the following conditions are met:

a. Auxiliary fuels for the incinerator unit shall be limited to natural gas, liquid petroleum gas, and/or distilled petroleum liquid fuel. Solid fuels, waste materials, or residual petroleum oil products shall not be used to fire the incinerator.

b. The waste incinerated shall be limited to pathological waste (poultry or swine remains). Litter and animal bedding or any other waste materials shall not be incinerated.

c. The design burn rate or capacity rate of the incinerator shall be 400 pounds per hour or less of poultry or swine. This value shall apply only to the mass of the poultry or swine and shall not include the mass of the fuel.

d. The incinerator shall be used solely to dispose of poultry or swine originating on the farm where the incinerator is located.

e. The incinerator shall be owned and operated by the owner or operator of the farm where the incinerator is located.

f. The incinerator shall not be charged beyond the manufacturer's recommended rated capacity.

g. Records shall be maintained on site to demonstrate compliance with the conditions for this exemption, including the total amount of pathological waste incinerated and the fuel usage on a calendar year quarterly basis.

C. The exemption of new stationary sources shall be determined as specified below:

1. New stationary sources with uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate of a new stationary source is the sum of the uncontrolled emission rates of the individual affected emissions units. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting new stationary sources under this subsection.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Particulate Matter (PM ₁₀)	15 tpy
Particulate Matter (PM _{2.5})	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H ₂ S)	9 tpy
Total Reduced Sulfur (including H ₂ S)	9 tpy
Reduced Sulfur Compounds (including H ₂ S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM₁₀ or PM_{2.5}) emissions for a stationary source can be determined in a manner acceptable to the department and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀ or PM_{2.5}), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM₁₀ or PM_{2.5}) cannot be determined in a manner acceptable to the department, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a new stationary source if all of the emissions considered in calculating the uncontrolled emission rate of the new stationary source are fugitive emissions.

D. The exemption of projects shall be determined as specified below:

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

1. A project that would result in increases in uncontrolled emission rates at the stationary source less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate increase of a project is the sum of the uncontrolled emission rate increases of the individual affected emissions units. Uncontrolled emissions rate decreases are not considered as part of this calculation. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting projects under this subsection.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	10 tpy
Sulfur Dioxide	10 tpy
Particulate matter	15 tpy
Particulate matter PM ₁₀	10 tpy
Particulate matter (PM _{2.5})	6 tpy
Volatile organic compounds	10 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H ₂ S)	9 tpy
Total Reduced Sulfur (including H ₂ S)	9 tpy
Reduced Sulfur Compounds (including H ₂ S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM₁₀ or PM_{2.5}) emissions for a stationary source can be determined in a manner acceptable to the department and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀ or PM_{2.5}), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM₁₀ or PM_{2.5}) cannot be determined in a manner

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

acceptable to the department, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a project if all of the emissions considered in calculating the uncontrolled emission rate increase of the project are fugitive emissions.

E. Exemptions for stationary sources of toxic pollutants not subject to the federal hazardous air pollutant new source review program shall be as follows:

1. Stationary sources exempt from the requirements of Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) as provided in 9VAC5-60-300 C 1, C 2, C 7, D, or E shall be exempt from the provisions of this article.

2. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the provisions of this article.

a. Incinerators, unless (i) the incinerator is used exclusively as air pollution control equipment, (ii) the incinerator is an open pit incinerator subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the disposal of clean burning waste and debris waste, or (iii) the incinerator is a poultry or swine incinerator located on a farm and all of the conditions of subdivision B 15 of this section are met.

b. Ethylene oxide sterilizers.

c. Boilers, incinerators, or industrial furnaces as defined in 40 CFR 260.10 and subject to 9VAC20-60 (Hazardous Waste Regulations).

F. This subsection provides information on the extent to which any source category or portion of a source category subject to the federal hazardous air pollutant new source review program may be exempt from the provisions of this article.

1. This subdivision addresses those source categories subject to the provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08, and 40 CFR 61.15 that establish the requirements for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61.

2. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.5 that establish the requirements for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E. Any source category or portion of a source category

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 63.

3. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.50 through 40 CFR 63.56 that establish the requirements for issuing notices of MACT approval prior to the construction of a new emissions unit listed in the source category schedule for standards. Any information regarding exemptions for a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. This subdivision addresses those source categories for which EPA has promulgated a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act in the source category schedule for standards. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article.

ARTICLE 10. PERMIT APPLICATION FEES FOR STATIONARY SOURCES.

9VAC5-80-2290. Permit application fee payment.

A. The permit application fee required by this article is due on the date that the permit application is received by the appropriate regional office of the department. The permit application fee is nonrefundable. Incomplete payment shall be deemed as nonpayment.

B. The permit application shall not be considered complete until a permit application fee for the proper amount is received. Review of the application will not proceed past an initial applicability determination until a permit application fee for the proper amount is received.

C. The permit application fee shall be paid by check, draft, or postal money order made payable to the Treasurer of Virginia and mailed or sent electronically to the address specified by the department.

D. The permit application should be mailed or submitted electronically to the appropriate regional office of the department.

ARTICLE 11. ANNUAL PERMIT MAINTENANCE FEES FOR STATIONARY SOURCES.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

9VAC5-80-2350. Annual permit maintenance fee payment.

A. Upon determining that the owner of a stationary source owes an annual permit maintenance fee, the department will mail **or send electronically** a bill for the fee to that owner no later than August 1.

B. Within 30 days following the date of the postmark **or electronic submittal** on the bill, the owner shall respond in one of the following ways:

1. The owner may pay the fee in full.

2. The owner may request that the fee amount be revised if the owner can document that the status of the permits on which the fee was based is in error. This request shall include appropriate source identification data, copies of all valid air permits, the revised fee amount, adequate supporting documentation, and other information as the department may require. The owner shall file the request with the appropriate regional office in a form acceptable to the department. If the department approves the request, the revised fee amount shall be paid in full within 30 days of the date of approval.

C. The annual permit maintenance fee shall be paid by check, draft, or money order made payable to the Treasurer of Virginia and mailed to the address specified by the department.

9VAC5 CHAPTER 510.
NONMETALLIC MINERAL PROCESSING GENERAL PERMIT.

Part IV. General Permit Terms and Conditions.

9VAC5-510-230. Reporting requirements.

A. The permittee shall comply with the reporting requirements in this section. Any document (including reports) required by a permit term or condition to be submitted to the department shall contain a certification by a responsible official that meets the requirements of 9VAC5-510-100 E.

B. The permittee shall submit, according to procedures established by the department, an annual emissions update. Any additional information requested by the department under this subsection shall be submitted to the department within 30 days of the date of request.

C. To meet the requirements of 9VAC5-510-210 with respect to reporting, the permittee shall submit reports of any required monitoring at least every six months. All instances of deviations from permit requirements shall be clearly identified in such reports.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

D. The permittee shall furnish written notification to the department and the regional office of the U.S. Environmental Protection Agency of the following:

1. The actual date on which construction or installation or modification or reconstruction or relocation of any emission unit commenced, postmarked **or submitted electronically** within 30 days after that date.
2. The actual startup date of the emission unit within 15 days after that date.
3. The anticipated date of visible emissions evaluations for affected facilities subject to 40 CFR Part 60, subpart OOO postmarked **or submitted electronically** at least 30 days prior to that date.
4. The anticipated date of stack emissions tests of the affected facilities subject to 40 CFR Part 60, subpart OOO postmarked **or submitted electronically** at least 30 days prior to that date.

E. Within 30 days of completion, the permittee shall furnish written notification of equipment replacement, to include the following information, as applicable (for crushing, grinding, screening, elevator/belt conveying, bagging, storage bins, and truck/rail enclosed loading stations):

1. The rated capacity, in tons per hour, of the crusher being replaced; and the replacement crusher.
2. The total surface area of the top screen deck of:
 - a. The screening operation being replaced; and
 - b. The replacement screening operation.
3. The conveyor belt width of:
 - a. The conveyor operation being replaced; and
 - b. The replacement conveyor.
4. The rated storage capacity, in tons, of:
 - a. The bins being replaced; and
 - b. The replacement bins.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

5. A description of the control device used to reduce particulate matter emissions from the equipment and a list of all other pieces of equipment controlled by the same device.

6. The estimated age of the emissions units being replaced.

7. The identification of the emission standards applicable to the equipment being replaced and the replacement equipment.

F. The permittee shall comply with the reporting requirements of 9VAC5-20-180 concerning facility and control equipment maintenance or malfunction.

9VAC5 CHAPTER 530.
ELECTRIC GENERATOR VOLUNTARY DEMAND RESPONSE GENERAL PERMIT.

PART IV. GENERAL PERMIT TERMS AND CONDITIONS FOR ELECTRIC
GENERATING UNITS USING FUEL THROUGHPUT FOR COMPLIANCE
DEMONSTRATION.

9VAC5-530-210. Reporting requirements.

A. The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated startup date of each affected unit postmarked or submitted electronically not more than 60 days nor less than 30 days prior to such date.

4. The actual startup date of each affected unit within 15 days after such date.

5. The anticipated date of performance tests of each affected unit postmarked or submitted electronically at least 30 days prior to such date.

B. The owner shall furnish notification to the regional office of malfunctions of the affected unit or related air pollution control equipment that may cause excess emissions for more than one hour.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

1. Such notification shall be made as soon as practicable but no later than four daytime business hours after the malfunction is discovered.

2. The owner shall provide a written statement giving all pertinent facts, including the estimated duration of the breakdown, within two weeks of discovery of the malfunction.

3. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the regional office.

PART V. GENERAL PERMIT TERMS AND CONDITIONS FOR ELECTRIC
GENERATING UNITS USING HOURS OF OPERATION FOR COMPLIANCE
DEMONSTRATION.

9VAC5-530-290. Reporting requirements.

A. The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated startup date of each affected unit postmarked **or submitted electronically** not more than 60 days nor less than 30 days prior to such date.

4. The actual startup date of each affected unit within 15 days after such date.

5. The anticipated date of performance tests of each affected unit postmarked **or submitted electronically** at least 30 days prior to such date.

B. The owner shall furnish notification to the regional office of malfunctions of the affected unit or related air pollution control equipment that may cause excess emissions for more than one hour.

1. Such notification shall be made as soon as practicable but no later than four daytime business hours after the malfunction is discovered.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-40, -45, -50, -60, -80, -510, -530, and -540)

2. The owner shall provide a written statement giving all pertinent facts, including the estimated duration of the breakdown, within two weeks of discovery of the malfunction.

3. When the condition causing the failure or malfunction has been corrected and the equipment is again in operation, the owner shall notify the regional office.

9VAC5 CHAPTER 540.
EMERGENCY GENERATOR GENERAL PERMIT.

PART IV. GENERAL PERMIT TERMS AND CONDITIONS FOR AFFECTED UNITS.

9VAC5-540-210. Reporting requirements.

A. The owner shall furnish written notification to the regional office of the following:

1. The actual date on which construction or modification of each affected unit commenced within 30 days after such date.

2. If necessary, the actual date on which the integration operational period of each affected unit commenced within 15 days after such date.

3. The anticipated startup date of each affected unit postmarked **or submitted electronically** not more than 60 days nor less than 30 days prior to such date.

4. The actual startup date of each affected unit within 15 days after such date.

**COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD MEETING**

November 16, 2023

SUBJECT: Federal Documents Incorporated by Reference (Rev. D23) - Request for Board Action on Exempt Final Regulation

CONTACT: Karen G. Sabasteanski
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Department of Environmental Quality

INTRODUCTION

The purpose of the proposed action is to amend the regulations to incorporate newly promulgated federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and national emission standards for hazardous air pollutants for source categories (Maximum Achievable Control Technology, or MACT), Rules 5-5, 6-1, and 6-2, respectively, of the board's regulations. The board needs to incorporate newly promulgated NSPS, NESHAP, and MACT standards in order for the department to obtain authority from the U.S. Environmental Protection Agency (EPA) to enforce these standards. If the board does not do so, authority to enforce the standards remains with the federal government. Further, the standards reflect the most current technical research on the subjects addressed by the standards. To continue to follow the old standards would mean relying on inaccurate and outdated information.

The department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act and the Air Pollution Control Law.

REGULATORY ACTION ADOPTION PROCESS

Because the state regulations are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations, the state regulations are exempt from the standard regulatory adoption process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the standard regulatory adoption process and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. Further, in adopting

the regulation amendments under the provisions of § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Notice that the regulations would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

SUMMARY OF AMENDMENTS TO REGULATION

1. The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2023. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

2. Two new NSPSs have been added:

Subpart KKa of 40 CFR Part 60, Standards of Performance for Lead Acid Battery Manufacturing Plants for Which Construction, Modification or Reconstruction Commenced After February 23, 2022.

Subpart MMA of 40 CFR Part 60, Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations for which Construction, Modification or Reconstruction Commenced After May 18, 2022.

SUPPORTING DOCUMENTATION

Immediately following this agenda memo are:

1. The agency background document.
2. The draft proposed regulation.

DEPARTMENT RECOMMENDATION

1. It is recommended that the board adopt the attached proposal, with an effective date as provided in the Administrative Process Act.
2. In adopting this proposal, the board should affirm that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

REG\DEV\23-07BF



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary: Article 5 (9VAC5-50-400 et seq.), 9VAC5-50 Secondary: Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.)
VAC Chapter title(s)	New and Modified Stationary Sources (9VAC5-50), Hazardous Air Pollutant Sources (9VAC5-60)
Action title	Federal Documents Incorporated by Reference (Rev. D23)
Final agency action date	
Date this document prepared	

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2023. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version. Finally, two new federal standards have been added.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or

board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Section 111 of the federal Clean Air Act requires that EPA develop new source performance standards (NSPSs). The Standards of Performance for New Stationary Sources are found in 40 CFR Part 60. Emissions guidelines for existing sources are also codified under 40 CFR Part 60.

Hazardous air pollutants (HAPs) are pollutants for which no ambient air quality standard is applicable, yet pose the risk of serious health problems. EPA's program for dealing with HAPs is established in § 112 of the Clean Air Act. The National Emission Standards for Hazardous Air Pollutants are found in 40 CFR Part 61. In addition, EPA controls HAPs for specific source categories as required under § 112. The National Emission Standards for Hazardous Air Pollutants for Source Categories are more familiarly referred to as Maximum Achievable Technology Standards (MACT), and are found in 40 CFR Part 63.

The Act provides that each state may develop and submit to EPA a procedure for implementing and enforcing these standards. If EPA finds the state procedures adequate, the state is delegated the authority to implement and enforce the standards. Virginia has sought and received this authority. In order to retain this authority, the state's regulations must be consistent with the federal requirements.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

- CFR - Code of Federal Regulations
- HAP - hazardous air pollutant
- MACT - Maximum Achievable Control Technology
- NESHAP - National Emissions Standards for Hazardous Air Pollutants
- NSPS - New Source Performance Standard

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On November 16, 2023, the State Air Pollution Control Board took final action to adopt amendments to the Regulations for the Control and Abatement of Air Pollution, specifically federal regulations incorporated by reference (Article 5 of 9VAC5-50, and Articles 1 and 2 of 9VAC5-60). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Legal Basis

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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

The regulatory changes are needed in order to meet the mandates of the federal Clean Air Act and its implementing regulations in order to protect public health and welfare from hazardous air pollutants and pollution generated by categories of new sources, which are proven to be detrimental to both health and welfare. The goal of the regulatory changes is to address air pollution throughout the Commonwealth by controlling emissions of hazardous air pollutants and pollution emitted by categories of new and existing sources. The regulation amendments update the version of regulations being implemented in Virginia to the most current federal versions, as required by the Clean Air Act and the state’s delegation agreement with EPA.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The regulation amendments update state regulations that incorporate by reference certain federal regulations (NSPS, NESHAP and MACT) to reflect the Code of Federal Regulations as published on July 1, 2023. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version. In addition, two new NSPSs have been added: Subpart KKa of 40 CFR Part 60, Standards of Performance for Lead Acid Battery Manufacturing Plants for Which Construction, Modification or Reconstruction Commenced After February 23, 2022, and Subpart MMA of 40 CFR Part 60, Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations for which Construction, Modification or Reconstruction Commenced After May 18, 2022.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Public: Advantages to the regulated community include more certainty, as consistency with EPA requirements provides assurance regarding specific federal and state requirements. The general public will benefit from a reduction in the health and welfare effects of air pollution, as the most current standards are more protective of human health and welfare. Properly implementing federal requirements will ensure the control of numerous types of air pollutants, which are proven to harm human health and welfare. There is an overall benefit to all sectors of the public in that the Commonwealth is retaining its ability to directly manage its sources of air pollution rather than relying on the federal government.

Department: The department will benefit by meeting its federal mandates in a consistent and clear manner.

There are no disadvantages associated with this regulatory action to either the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements more restrictive than the federal.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

No other state agencies will be particularly affected by this regulatory action.

Localities Particularly Affected:

There are no localities particularly affected.

Other Entities Particularly Affected:

There are no other entities particularly affected.

Details of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
*9VAC5-50-400	n/a	General requirements for NSPSSs.	Updates referenced Code of Federal Regulations to the most current version. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-50-410	n/a	Designated standards of performance.	Adds 2 new standards to list of federal standards implemented by the state on the behalf of EPA. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-60-60	n/a	General requirements for NESHAPs.	Updates referenced Code of Federal Regulations to the most current

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			version. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.
*9VAC5-60-90	n/a	General requirements for MACTs.	Updates referenced Code of Federal Regulations to the most current version. Needed in order to meet federal requirements for protecting human health and welfare. No significant impacts are anticipated.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

These regulation amendments meet the requirements of federal law and regulation. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum requirements of federal law and regulation. Any such changes would compromise the effectiveness of the regulations in protecting the health and welfare of the public.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed 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.

No family impacts are anticipated.

Office of Regulatory Management
Economic Review Form

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary: Article 5 (9VAC5-50-400 et seq.), 9VAC5-50 Secondary: Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.)
VAC Chapter title(s)	New and Modified Stationary Sources (9VAC5-50), Hazardous Air Pollutant Sources (9VAC5-60)
Action title	Federal Documents Incorporated by Reference (Rev. D23)
Date this document prepared	
Regulatory Stage (including Issuance of Guidance Documents)	

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here. There are no direct costs associated with this action.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change. There are no indirect costs associated with this action.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here. The direct benefit of implementing this program is to meet federal requirements for protecting human health and welfare.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change. There is an indirect benefit of the efficient operation of state government, and in maintaining state control over state permitting and compliance programs.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) None.
(3) Net Monetized Benefit	None.	
(4) Other Costs & Benefits (Non-Monetized)	None.	
(5) Information Sources	Clean Air Act §§ 111 and 112; 40 CFR Parts 60, 61 and 63.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here. <u>All</u> changes are mandated, and the agency is not exercising any discretion.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)

(3) Net Monetized Benefit	
(4) Other Costs & Benefits (Non-Monetized)	
(5) Information Sources	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here. All changes are mandated, and the agency is not exercising any discretion.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Net Monetized Benefit		
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources		

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits	<p>Direct Costs: Describe the direct costs of this proposed change here. None.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p>
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Benefits (Monetized)	<p>None.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>The direct benefit of implementing this program is to meet federal requirements for protecting human health and welfare.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change. There may be indirect benefits in the protection of human health and welfare, and in the retention of implementing authority by Virginia instead of the federal government.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) None.
(3) Other Costs & Benefits (Non-Monetized)	None.	
(4) Assistance		
(5) Information Sources		

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>None.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>None.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>The direct benefit of implementing this program is to meet federal requirements for protecting human health and welfare.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change. There may be indirect benefits in the protection of human health and welfare, and in the retention of implementing authority by Virginia instead of the federal government.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits

	(a)	(b)
(3) Other Costs & Benefits (Non-Monetized)		
(4) Information Sources		

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here. None.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change. None.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here. The direct benefit of implementing this program is to meet federal requirements for protecting human health and welfare.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change. There may be indirect benefits in the protection of human health and welfare, and in the retention of implementing authority by Virginia instead of the federal government.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a)	(b)
(3) Other Costs & Benefits (Non-Monetized)		
(4) Alternatives		
(5) Information Sources		

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Net Change
	Statutory:				
	Discretionary:				
				Total Net Change of Statutory Requirements:	None.
				Total Net Change of Discretionary Requirements:	None.

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
				None.

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
		None.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length
			None.

*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

9VAC5 CHAPTER 50.
NEW AND MODIFIED STATIONARY SOURCES.

PART II.
Emission Standards.

ARTICLE 5.
Environmental Protection Agency Standards of Performance
For New Stationary Sources (Rule 5-5).

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated in this regulation by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2022)~~ (2023) in effect July 1, ~~2022~~ 2023. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means Section 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

9VAC5-50-410. Designated standards of performance.

Subpart A -- General Provisions.

40 CFR 60.1 through 60.3, 40 CFR 60.7 through 60.8, 40 CFR 60.11 through 40 CFR 60.15, 40 CFR 60.18 through 60.19

(applicability, definitions, units and abbreviations, notification and record keeping, performance tests, compliance, circumvention, monitoring requirements, modification, reconstruction, general control device requirements, and general notification and reporting requirements)

Subpart B -- Not applicable.

Subpart C -- Not applicable.

Subpart Ca -- Reserved.

Subpart Cb -- Not applicable.

Subpart Cc -- Not applicable.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

Subpart Cd -- Not applicable.

Subpart Ce -- Not applicable.

Subpart D -- Fossil Fuel-Fired Steam Generators.

40 CFR 60.40 through 40 CFR 60.46

(fossil fuel-fired steam generating units of more than 250 million Btu per hour heat input rate and fossil fuel-fired and wood residue-fired steam generating units capable of firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da -- Electric Utility Steam Generating Units.

40 CFR 60.40Da through 40 CFR 60.52Da

(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel, and for which construction, reconstruction or modification is commenced after September 18, 1978)

Subpart Db -- Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b

(industrial-commercial-institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc -- Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 60.48c

(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E -- Incinerators.

40 CFR 60.50 through 40 CFR 60.54

(incinerator units of more than 50 tons per day charging rate)

Subpart Ea -- Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989 and on or Before September 20, 1994.

40 CFR 60.50a through 60.59a

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Eb -- Large Municipal Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.

40 CFR 60.50b through 40 CFR 60.59b.

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Ec -- Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.

40 CFR 60.50c through 40 CFR 60.58c

(hospital/medical/infectious waste incinerators that combusts any amount of hospital waste and medical/infectious waste or both)

Subpart F -- Portland Cement Plants.

40 CFR 60.60 through 40 CFR 60.66

(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G -- Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74

(nitric acid production units)

Subpart Ga -- Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011.

40 CFR 60.70a through 40 CFR 60.77a

(nitric acid production units producing weak nitric acid by either the pressure or atmospheric pressure process)

Subpart H -- Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

(sulfuric acid production units)

Subpart I -- Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93

(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt; and the loading, transfer and storage systems associated with emission control systems)

Subpart J -- Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106

(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart Ja -- Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.

40 CFR 60.100a through 40 CFR 60.109a

(fluid catalytic cracking units, fluid coking units, delayed coking units, fuel gas combustion devices, including flares and process heaters, and sulfur recovery plants)

Subpart K -- Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973 and Prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka -- Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb -- Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

40 CFR 60.110b through 40 CFR 60.117b

(storage vessels with capacity greater than or equal to 10,566 gallons)

Subpart L -- Secondary Lead Smelters.

40 CFR 60.120 through 40 CFR 60.123

(pot furnaces of more than 550 lb charging capacity, blast (cupola) furnaces and reverberatory furnaces)

Subpart M -- Secondary Brass and Bronze Production Plants.

40 CFR 60.130 through 40 CFR 60.133

(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)

Subpart N -- Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced after June 11, 1973.

40 CFR 60.140 through 40 CFR 60.144

(basic oxygen process furnaces)

Subpart Na -- Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced after January 20, 1983.

40 CFR 60.140a through 40 CFR 60.145a

(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)

Subpart O -- Sewage Treatment Plants.

40 CFR 60.150 through 40 CFR 60.154

(incinerators that combust wastes containing more than 10 percent sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that charge more than 2205 pounds per day municipal sewage sludge (dry basis))

Subpart P -- Primary Copper Smelters.

40 CFR 60.160 through 40 CFR 60.166

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

(dryers, roasters, smelting furnaces, and copper converters)

Subpart Q -- Primary Zinc Smelters.

40 CFR 60.170 through 40 CFR 60.176

(roasters and sintering machines)

Subpart R -- Primary Lead Smelters.

40 CFR 60.180 through 40 CFR 60.186

(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces, and converters)

Subpart S -- Primary Aluminum Reduction Plants.

40 CFR 60.190 through 40 CFR 60.195

(potroom groups and anode bake plants)

Subpart T -- Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

40 CFR 60.200 through 40 CFR 60.205

(reactors, filters, evaporators, and hot wells)

Subpart U -- Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

40 CFR 60.210 through 40 CFR 60.215

(evaporators, hot wells, acid sumps, and cooling tanks)

Subpart V -- Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

40 CFR 60.220 through 40 CFR 60.225

(reactors, granulators, dryers, coolers, screens, and mills)

Subpart W -- Phosphate Fertilizer Industry: Triple Superphosphate Plants.

40 CFR 60.230 through 40 CFR 60.235

(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)

Subpart X -- Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

Facilities.

40 CFR 60.240 through 40 CFR 60.245

(storage or curing piles, conveyors, elevators, screens and mills)

Subpart Y -- Coal Preparation and Processing Plants.

40 CFR 60.250 through 40 CFR 60.258

(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)

Subpart Z -- Ferroalloy Production Facilities.

40 CFR 60.260 through 40 CFR 60.266

(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)

Subpart AA -- Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276

(electric arc furnaces and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart AAa -- Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a

(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB -- Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

tanks, lime kilns, condensate strippers, and kraft pulping operations)

Subpart BBa -- Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013.

40 CFR 60.280a through 40 CFR 60.288a

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers, and kraft pulping operations)

Subpart CC -- Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296

(glass melting furnaces)

Subpart DD -- Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304

(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar unloading stations, railcar loading stations, grain dryers, and all grain handling operations)

Subpart EE -- Surface Coating of Metal Furniture.

40 CFR 60.310 through 40 CFR 60.316

(metal furniture surface coating operations in which organic coatings are applied)

Subpart FF -- Reserved.

Subpart GG -- Stationary Gas Turbines.

40 CFR 60.330 through 40 CFR 60.335

(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)

Subpart HH -- Lime Manufacturing Plants.

40 CFR 60.340 through 40 CFR 60.344

(each rotary lime kiln)

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

Subpart II -- Reserved.

Subpart JJ -- Reserved.

Subpart KK -- Lead-Acid Battery Manufacturing Plants.

40 CFR 60.370 through 40 CFR 60.374

(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart KKa—Standards of Performance for Lead Acid Battery Manufacturing Plants for Which Construction, Modification or Reconstruction Commenced After February 23, 2022

40 CFR 60.370a through 40 CFR 60.375a

(lead acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart LL -- Metallic Mineral Processing Plants.

40 CFR 60.380 through 40 CFR 60.386

(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the beneficiation of uranium ore are exempted from the provisions of this subpart.)

Subpart MM -- Automobile and Light Duty Truck Surface Coating Operations.

40 CFR 60.390 through 40 CFR 60.397

(prime coat operations, guide coat operations, and top-coat operations)

Subpart MMa -- Automobile and Light Duty Truck Surface Coating Operations for which Construction, Modification or Reconstruction Commenced After May 18, 2022

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

40 CFR 60.390a through 40 CFR 60.397a

(prime coat operations, guide coat operations, and top-coat operations)

Subpart NN -- Phosphate Rock Plants.

40 CFR 60.400 through 40 CFR 60.404

(phosphate rock plants which have a maximum plant production capacity greater than 4 tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production)

Subpart OO -- Reserved.

Subpart PP -- Ammonium Sulfate Manufacture.

40 CFR 60.420 through 40 CFR 60.424

(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactam by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)

Subpart QQ -- Graphic Arts Industry: Publication Rotogravure Printing.

40 CFR 60.430 through 40 CFR 60.435

(publication rotogravure printing presses, except proof presses)

Subpart RR -- Pressure Sensitive Tape and Label Surface Coating Operations.

40 CFR 60.440 through 40 CFR 60.447

(pressure sensitive tape and label material coating lines)

Subpart SS -- Industrial Surface Coating: Large Appliances.

40 CFR 60.450 through 40 CFR 60.456

(surface coating operations in large appliance coating lines)

Subpart TT -- Metal Coil Surface Coating.

40 CFR 60.460 through 40 CFR 60.466

(metal coil surface coating operations: each prime coat operation, each finish

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)

Subpart UU -- Asphalt Processing and Asphalt Roofing Manufacture.

40 CFR 60.470 through 40 CFR 60.474

(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)

Subpart VV -- Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry.

40 CFR 60.480 through 40 CFR 60.489

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart VVa - Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced after November 7, 2006.

40 CFR 60.480a through 40 CFR 60.489a

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart WW -- Beverage Can Surface Coating Industry.

40 CFR 60.490 through 40 CFR 60.496

(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)

Subpart XX -- Bulk Gasoline Terminals.

40 CFR 60.500 through 40 CFR 60.506

(total of all the loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)

Subpart YY -- Reserved.

Subpart ZZ -- Reserved.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

Subpart AAA -- New Residential Wood Heaters.

40 CFR 60.530 through 40 CFR 60.539b

(NOTE: In accordance with Chapter 471 of the 2015 Acts of Assembly, authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations. A state permit may be required of certain facilities if the provisions of 9VAC5-50 and 9VAC5-80 apply. Owners should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.)

Subpart BBB -- Rubber Tire Manufacturing Industry.

40 CFR 60.540 through 40 CFR 60.548

(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)

Subpart CCC -- Reserved.

Subpart DDD -- Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

40 CFR 60.560 through 40 CFR 60.566

(For polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a continuous process that emits continuously: each polymerization reaction section; if dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)

Subpart EEE -- Reserved.

Subpart FFF -- Flexible Vinyl and Urethane Coating and Printing.

40 CFR 60.580 through 40 CFR 60.585

(each rotogravure printing line used to print or coat flexible vinyl or urethane products)

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

Subpart GGG -- Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or Before November 7, 2006.

40 CFR 60.590 through 40 CFR 60.593

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart GGGa -- Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After November 7, 2006.

40 CFR 60.590a through 60.593a

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH -- Synthetic Fiber Production Facilities.

40 CFR 60.600 through 40 CFR 60.604

(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III -- Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618

(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ -- Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625

(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK -- Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011.

40 CFR 60.630 through 40 CFR 60.636

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart)

Subpart LLL -- Sulfur Dioxide Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011.

40 CFR 60.640 through 40 CFR 60.648

(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM -- Reserved.

Subpart NNN -- Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668

(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO -- Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676

(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP -- Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685

(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ -- VOC Emissions From Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699

(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

Subpart RRR -- Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708

(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS -- Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718

(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT -- Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726

(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU -- Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 60.737

(each calciner and dryer at a mineral processing plant)

Subpart VVV -- Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748

(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW -- Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

Subpart XXX -- Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, or Modification After July 17, 2014.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

40 CFR 60.760 through 40 CFR 60.769

(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

Subpart AAAA -- Small Municipal Waste Combustors for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.

40 CFR 60.1000 through 40 CFR 60.1465

(municipal waste combustor units with a capacity less than 250 tons per day and greater than 35 tons per day of municipal solid waste or refuse-derived fuel)

Subpart BBBB -- Not applicable.

Subpart CCCC -- Commercial/Industrial Solid Waste Incinerators.

40 CFR 60.2000 through 40 CFR 60.2265

(an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility, or an air curtain incinerator without energy recovery, that is a distinct operating unit of any commercial or industrial facility)

Subpart DDDD -- Not applicable.

Subpart EEEE -- Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006.

40 CFR 60.2880 through 40 CFR 60.2977

(very small municipal waste combustion units with the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, and institutional waste incineration units owned or operated by an organization having a governmental, educational, civic, or religious purpose)

Subpart FFFF -- Reserved.

Subpart GGGG -- Reserved.

Subpart HHHH -- Reserved.

Subpart IIII -- Stationary Compression Ignition Internal Combustion Engines.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

40 CFR 60.4200 through 40 CFR 60.4219

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1, Federal Operating Permits for Stationary Sources, or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3, Federal Operating Permits for Acid Rain Sources, of Part II of 9VAC5-80 (Permits for Stationary Sources).)

Subpart JJJJ -- Stationary Spark Ignition Internal Combustion Engines.

40 CFR 60.4230 through 40 CFR 60.4248

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations for any source that is not (i) a major source as defined in 9VAC5-80-60 and subject to Article 1, Federal Operating Permits for Stationary Sources, or (ii) an affected source as defined in 9VAC5-80-370 and subject to Article 3, Federal Operating Permits for Acid Rain Sources, of Part II of 9VAC5-80 (Permits for Stationary Sources).)

Subpart KKKK -- Stationary Combustion Turbines.

40 CFR 60.4300 through 40 CFR 60.4420

(stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour)

Subpart LLLL -- Sewage Sludge Incineration Units.

40 CFR 60.4760 through 40 CFR 60.4925

(an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter, including the sewage sludge feed system, auxiliary fuel feed system, grate system, flue gas system, waste heat recovery equipment, and bottom ash system; and all ash handling systems connected to the bottom ash handling system)

Subpart MMMM -- Reserved.

Subpart NNNN -- Reserved.

Subpart OOOO -- Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Modification or Reconstruction Commenced after August 23, 2011, and on or before September 18, 2015.

40 CFR 60.5360 through 40 CFR 60.5499

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

(facilities that operate gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers, and storage vessels)

Subpart OOOOa -- Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015.

40 CFR 60.5360a through 40 CFR 60.5499a

(facilities that operate gas wells, centrifugal compressors, reciprocating compressors, pneumatic controllers and pumps, storage vessels, and sweetening units)

Subpart PPPP -- Reserved.

Subpart QQQQ -- New Residential Hydronic Heaters and Forced-Air Furnaces.

40 CFR 60.5472 through 40 CFR 60.5483

(NOTE: In accordance with Chapter 471 of the 2015 Acts of Assembly, authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations. A state permit may be required of certain facilities if the provisions of 9VAC5-50 and 9VAC5-80 apply. Owners should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.)

Subpart RRRR -- Reserved.

Subpart SSSS -- Reserved.

Subpart TTTT -- Reserved.

Appendix A -- Test Methods.

Appendix B -- Performance Specifications.

Appendix C -- Determination of Emission Rate Change.

Appendix D -- Required Emission Inventory Information.

Appendix E -- Reserved.

Appendix F -- Quality Assurance Procedures.

Appendix G -- Not applicable.

Appendix H -- Reserved.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

Appendix I -- Removable Label and Owner's Manual.

9VAC5-60.
HAZARDOUS AIR POLLUTANT SOURCES.

PART II.
Emission Standards.

ARTICLE 1.
Environmental Protection Agency National Emission
Standards For Hazardous Air Pollutants (Rule 6-1).

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated in this regulation by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2022)~~ (2023) in effect July 1, ~~2022~~ 2023. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means Section 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

ARTICLE 2.
Environmental Protection Agency National Emission Standards for
Hazardous Air Pollutants for Source Categories (Rule 6-2).

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated in this regulation by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2022)~~ (2023) in effect July 1, ~~2022~~ 2023. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means Section 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5-50 AND -60)

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