



Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: Article 45, 9VAC5-40 (Existing Stationary Sources) Secondary action: 9VAC5-20-21
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Commercial/Industrial Solid Waste Incinerators (Rev. E13)
Document preparation date	June 24, 2013

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Designated pollutants are pollutants for which new source performance standards have been established under § 111(b) of the federal Clean Air Act. A designated facility is an existing facility which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the facility were new. The Act requires the U.S. Environmental Protection Agency (EPA) to establish procedures for states to submit plans to control facilities that emit designated pollutants. Section 129 requires that EPA establish performance standards and other requirements pursuant to § 111 and § 129 for each category of solid waste incineration units. Such standards include emissions limitations and other requirements applicable to new units and guidelines and other requirements applicable to existing units. It also requires states to submit plans for these sources in a process similar to that in § 111(d). Subpart B provides that EPA publish guideline documents for development of state emission standards after promulgation of any standard of performance for designated pollutants. The emission guidelines (EGs) reflect the degree of emission reduction attainable with the best adequately demonstrated systems of emission reduction, considering costs, applied to existing facilities. EPA established EGs for EPA amended its emission guidelines for commercial/industrial solid waste incinerators (CISWIs) in the Federal Register of February 7, 2013 (78 FR 9112). In order to implement the EG, it is necessary for Virginia to amend its state regulation containing those limits.

Statement of final agency action

Please 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 June 21, 2013 the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, Emission Standards for Commercial/Industrial Solid Waste Incinerators, Article 45 of 9VAC5-40 (Existing Stationary Sources). 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 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.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
In general: This regulation is being revised primarily to replace specific state language with reference to federal documents incorporated by reference. This is being done in order to avoid frequent regulatory changes to a rule that is essentially identical to the federal rule, to ensure accuracy, and to improve understanding and implementation.			
9VAC5-20-21		Documents incorporated by reference.	Needed in order to reference the most current version of the federal rule by reference into the state rule, thus enabling the state to implement the federal rule.
9VAC5-40-6250		Applicability and designation of affected facility.	Revise applicability provisions. Needed in order to properly implement federal requirements.
9VAC5-40-6260		Definitions.	Provide definitions needed for proper operation of the rule and remove unnecessary definitions. Needed in order to properly implement federal and state requirements, and for the regulation to be readable and easily understood.
9VAC5-40-6270		Standard for particulate matter.	Emission limits and emission standards. Consolidate individual emission standards into one section, which references emission limits and emission standards as required by 40 CFR 60.2670. Needed in order to properly implement federal requirements.

9VAC5-40-6280 through 9VAC5-40-6350		Standards for carbon monoxide, dioxins/furans, hydrogen chloride, sulfur dioxide, nitrogen oxides, lead, cadmium, and mercury.	Remove and reserve sections that have been consolidated into 9VAC5-40-6270. Needed for the regulation to be readable and easily understood.
9VAC5-40-6370		Standard for fugitive dust/emissions.	Update provisions for fugitive dust/emissions. Needed in order to properly implement federal and state requirements.
9VAC5-40-6380		Standard for odor.	Establish provisions for odor. Citation correction needed in order to properly implement state requirements.
9VAC5-40-6390		Standard for toxic pollutants.	Establish provisions for toxic pollutants. Citation correction needed in order to properly implement state requirements.
9VAC5-40-6400		Operator training and certification.	Update provisions for operator training and certification requirements. Needed in order to properly implement federal requirements.
9VAC5-40-6410		Waste management plan.	Update provisions for waste management plans. Needed in order to properly implement federal requirements.
9VAC5-40-6420		Compliance schedule.	Update the compliance schedule. Needed in order to properly implement federal requirements.
9VAC5-40-6421 and 9VAC5-40-6422		Compliance schedule extension.	Remove and reserve sections that have been consolidated into 9VAC5-40-6420. Needed for the regulation to be readable and easily understood.
9VAC5-40-6430		Operating limits.	Update operating limits. Needed in order to properly implement federal requirements.
9VAC5-40-6440		Facility and control equipment maintenance or malfunction.	Update facility and control equipment maintenance or malfunction requirements. Needed in order to properly implement federal and state requirements.
9VAC5-40-6450		Test methods and procedures.	Update performance testing requirements. Needed in order to properly implement federal and state requirements.
9VAC5-40-6460		Compliance.	Update compliance requirements. Needed in order to properly implement state and federal requirements.
9VAC5-40-6470		Monitoring.	Update monitoring requirements. Needed in order to properly implement state and federal requirements.
9VAC5-40-6480		Recordkeeping and reporting.	Update recordkeeping and reporting requirements. Needed in order to properly implement federal and state requirements.
9VAC5-40-6490		Air curtain incinerators	Update requirements for air curtain incinerators. Needed in order to properly implement federal requirements.
9VAC5-40-6510		Permits.	Describe additional permitting requirements to which sources may be potentially subject. Citation correction needed in order to properly implement state requirements.
	9VAC5-40-		List documents incorporated by reference.

	6520		Needed in order for the regulation itself to operate properly.
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Regulatory flexibility analysis

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) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of 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 proposed regulation.

The regulations apply to all facilities, including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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