

Virginia Regulatory Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	9 VAC 5-20-206
Secondary Action(s):	none
Action Title:	Hampton Roads VOC Emissions Control Area (Rev. G02)
Date:	01-27-03

This information is required pursuant to the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary *

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.

Currently, Chapter 40 of the Regulations for the Control and Abatement of Air Pollution contains a number of regulations with VOC emission standards. The geographic applicability of these rules is defined by establishing VOC emissions control areas in a list located in 9 VAC 5-20-206 of Chapter 20. This list currently exempts existing stationary sources in four jurisdictions within the Hampton Roads VOC Emissions Control Area: James City County, York County, Poquoson City, and Williamsburg City. The applicable VOC standards are set forth in several articles in Chapter 40. The proposed amendments will remove the exemptions for sources in the four localities in order to render those sources subject to the VOC standards for existing sources, as is the case in the other jurisdictions within the Hampton Roads Emissions VOC Control Area.

Basis *

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation proposed. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation.

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 *

Please provide a statement explaining the rationale or justification of the proposed regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulation is to require owners to limit emissions of air pollution from a variety of sources to the level necessary for (i) the protection of public health and welfare, and (ii) the attainment and maintenance of the air quality standards. The proposed amendments are being made to enlarge the scope of the Hampton Roads Emissions Control Area in order to meet Virginia's obligation to implement contingency measures as a result of this area's violation of the 1-hour ozone standard.

Substance *

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

Currently, Chapter 40 of the Regulations for the Control and Abatement of Air Pollution contains a number of regulations with VOC emission standards. The geographic applicability of these rules is defined by establishing VOC emissions control areas in a list located in 9 VAC 5-20-206 of Chapter 20. This list currently exempts existing stationary sources in four jurisdictions within the Hampton Roads VOC Emissions Control Area: James City County, York County, Poquoson City, and Williamsburg City. The applicable VOC standards are set forth in the following articles in Chapter 40:

Article 5 - Emission standards for synthesized pharmaceutical products manufacturing operations

Article 6 - Emission standards for rubber tire manufacturing operations

Article 24 - Emission standards for solvent metal cleaning operations using non-halogenated solvents

- Article 25 - Emission standards for volatile organic compound storage and transfer operations
- Article 26 - Emission standards for large appliance coating application systems
- Article 27 - Emission standards for magnet wire coating application systems
- Article 28 - Emission standards for automobile and light duty truck coating application systems
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- Article 33 - Emission standards for metal furniture coating application systems
- Article 34 - Emission standards for miscellaneous metal parts and products coating application systems
- Article 35 - Emission standards for flatwood paneling coating application systems
- Article 36 - Emission standards for flexographic, packaging rotogravure and publication rotogravure printing lines
- Article 37 - Emission standards for petroleum liquid storage and transfer operations
- Article 39 - Emission standards for asphalt paving operations

The proposed amendments will remove the exemptions for sources in the four localities in order to render those sources subject to the VOC standards for existing sources, as is the case in the other jurisdictions within the Hampton Roads Emissions VOC Control Area.

Issues *

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1. Public: The primary advantage to the public is that the amendments will significantly decrease emissions of VOCs in the Hampton Roads area, thus benefiting public health and welfare. There are no disadvantages to the public.
2. Department: The primary advantages to the department are that the amendments will allow Virginia (1) to implement the contingency measures of the 1-hour maintenance plan established for the Hampton Roads area, and (2) to avoid federal sanctions that would be imposed for violating the SIP provisions of the Clean Air Act. There are no disadvantages to the department.

Localities Particularly Affected *

Please provide the identity of any localities particularly affected by the proposed regulation.

The localities particularly affected are James City County, York County, Poquoson City, and Williamsburg City.

Public Participation *

Please indicate the nature of the comments the Department is soliciting pursuant to this notice.

The Department is seeking comment on the proposed regulation and the costs and benefits of the proposal. The Department is also seeking comment on the impacts of the proposed regulation on farm and forest lands.

Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and (e) the projected cost of the regulation for affected individuals, businesses, or other entities. Include a description of the beneficial impact the regulation is designed to produce.

1. Entities Affected

Information derived from data collected by the Department of Environmental Quality via the Comprehensive Environmental Data System (CEDs) reveals 23 potentially affected sources located in the four jurisdictions for which the exemption is being removed. This number derives from the total number of sources in the area (34) excepting the five dry cleaners, three sewage treatment plants, and three factories for the production of pottery, glass, and cigarettes. These 11 sources might not be affected by this regulatory action. Of the remaining 23 sources, the two hospitals, depending on their size and the nature of their operations, might become subject to Article 24 (Emission standards for solvent metal cleaning operations using non-halogenated solvents). The five national security facilities, depending on their size and the nature of their operations, might become subject to these same two articles plus Articles 25, 36, 37, and 39 (Emission standards for volatile organic compound storage and transfer operations, Emission standards for flexographic, packaging rotogravure and publication printing lines, Emission standards for petroleum liquid storage and transfer operations, and Emission standards for asphalt paving operations). Other articles that might become applicable to sources in these four jurisdictions include Article 28 (Emission standards for automobile and light duty truck coating application systems, applicable to the transportation equipment manufacturer) and article 29 (Emission standards for can coating application systems, applicable to the metal can manufacturer).

In addition, an unknown number of service stations might become subject to Article 24. Neither the CEDs database nor the Virginia Gasoline Marketers Council could produce an estimate of the number of service stations in the four affected jurisdictions.

2. Fiscal Impact

a. Costs to Affected Entities

Source-specific cost data was determined for the following articles:

Article 24 - Emission standards for solvent metal cleaning operations using non-halogenated solvents: \$1,400 per ton (*Control Measure Development Support Analysis of Ozone Transport Commission Model Rules*, E. H. Pechan and Associates, March 31, 2001, p. 19)

Article 25 - Emission standards for volatile organic compound storage and transfer operations: \$4,300-120,000 capital cost per tank (67 FR 15674, April 2, 2002)

Article 34 - Emission standards for miscellaneous metal parts and products coating application systems: \$2,635-114,540 total cost per year, depending on source size, type, location, and controls (67 FR 52780, August 13, 2002)

Article 36 - Emission standards for flexographic, packaging rotogravure and publication rotogravure printing lines: \$120-2,000 per ton, depending on source size, type, location, and controls (*Regulatory Analysis Document for Proposed Regulation Revision RR Concerning Emission Standards for Sources of Volatile Organic Compounds*, Virginia Department of Environmental Quality, May 22, 1995)

Article 39 - Emission standards for asphalt paving operations: \$89-121 per ton (*Summary of Technical Information for Selected VOC Source Categories*, U. S. Environmental Protection Agency, May 1981, p. 2-9; 1981 figures may be adjusted according to CPI inflators: 1.17 annually to 1995 and 1.2 annually from 1996)

Source-specific cost data was not determined for the remainder of the applicable articles. For these articles, the average cost per ton of VOC removal may be assumed to be \$2,400 (letter to Mary Nichols, EPA, from Mary A. Gade et al., Ozone Transport Assessment Group, Attachment B, "Recommendation: Additional Modeling and Air Quality Analysis," July 8, 1997). The actual figure for each article, of course, will vary widely depending on source type, size, location, and controls.

b. Costs to Localities

The projected costs of the amendments on localities are not expected to be beyond those of other affected entities and are addressed in paragraph 2a above.

c. Costs to Agency

It is not expected that the amendments will result in any cost to the Department beyond that currently in the budget. The sources of Department funds to

carry out this regulation are the general fund and the federal trust (grant money provided by the U.S. Environmental Protection Agency under Section 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)/subprogram (code): (i) Environmental and Resource Management (5120000)/Air Quality Stationary Source Permitting (5122000) and Air Quality Stationary Source Compliance Inspections (5122100). The costs are expected to be ongoing.

d. Benefits

The adoption of these amendments will significantly decrease emissions of VOCs in the Hampton Roads area, thus benefiting public health and welfare. The amendments will also allow Virginia to implement the contingency measures of the 1-hour maintenance plan established for the Hampton Roads area and to avoid federal sanctions that would be imposed for violating the SIP provisions of the Clean Air Act.

e. Small Business Impact

The impact upon facilities that meet the definition of small business provided in § 9-199 of the Code of Virginia is addressed in paragraph 2a above.

Legal Requirements

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

Federal Requirements

Federal Clean Air Act (CAA):

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

Code of Federal Regulations (CFR):

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

Federal Register (FR):

http://www.gpo.gov/su_docs/aces/aces140.html

Sections 109 (a) and (b) of the Clean Air Act require EPA to prescribe primary and secondary air quality standards to protect public health and welfare, respectively, for each air pollutant for which air quality criteria were issued before the enactment of the 1970 Clean Air Act. These standards are known as the National Ambient Air Quality Standards (NAAQS). Section 109 (c) requires EPA to prescribe such standards simultaneously with the issuance of new air quality criteria for any additional air pollutant. The primary and secondary air quality criteria are authorized for promulgation under Section 108.

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

(1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

(2) establish schedules for compliance;

(3) prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and

(4) require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

Part D describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1 provides the overall framework of what nonattainment plans are to contain, while Subpart 2 provides more detail on what is required of areas designated nonattainment for ozone.

Section 107(d)(3)(D) provides that a state may petition EPA to redesignate a nonattainment area as attainment and EPA may approve the redesignation subject to certain criteria being met. Section 107(d)(3)(E) stipulates one of these criteria, that EPA must fully approve a maintenance plan that meets the requirements of § 175A.

According to § 175A(a), the maintenance plan must be part of a SIP submission, and must provide for maintenance of the NAAQS for at least 10 years after the redesignation. The plan must contain any additional measures, as needed, to ensure maintenance. Section 175A(b) further requires that 8 years after redesignation, a maintenance plan for the next 10 years must then be submitted. As stated in Section 175A(c), nonattainment requirements continue to apply until the SIP submittal is approved. Finally, § 175A(d) requires that the maintenance plan contain contingency provisions which will be implemented should the area fail to maintain the NAAQS as provided for in the original plan.

40 CFR Part 50 specifies the NAAQS: sulfur dioxide, particulate matter, carbon monoxide, ozone (and its precursors, volatile organic compounds) nitrogen dioxide, and lead.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and record-keeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans.

Section 51.230 under Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

(1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

(2) enforce applicable laws, regulations, and standards, and seek injunctive relief;

(3) abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

(4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

(5) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require record-keeping and to make inspections and conduct tests of air pollution sources;

(6) 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; and

(7) make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority as follows:

(1) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and

(2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

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

State Requirements

Code of Virginia:

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

Virginia Administrative Code (VAC):

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

These specific amendments are not required by state mandate. Rather, 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). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300).

Comparison with Federal Requirements

Please describe the provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.

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

Need

Please provide an explanation of the need for the proposed regulation and potential consequences that may result in the absence of the regulation. Also set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens or would be essential for the efficient and economical performance of an important governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.

Among the primary goals of the federal Clean Air Act are the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient

air. EPA requires that each state submit a plan (called a State Implementation Plan or SIP), including any laws and regulations necessary to enforce the plan, that shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

A SIP is the key to the state's air quality programs. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards—that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the federal Clean Air Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards. There are three basic types of measures: stationary source control measures, mobile source control measures, and transportation source control measures. Stationary source control measures are directed at limiting emissions primarily from commercial/industrial facilities and operations and include the following: emission limits, control technology requirements, preconstruction permit programs for new industry and expansions, and source-specific control requirements. Stationary source control measures also include area source control measures which are directed at small businesses and consumer activities. Mobile source control measures are directed at tailpipe and other emissions primarily from motor vehicles and include the following: Federal Motor Vehicle Emission Standards, fuel volatility limits, reformulated gasoline, emissions control system anti-tampering programs, and inspection and maintenance programs. Transportation source control measures limit the location and use of motor vehicles and include the following: carpools, special bus lanes, rapid transit systems, commuter park and ride lots, bicycle lanes, signal system improvements, and many others.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal

mandate for these regulations is general, not specific, consisting of the Clean Air Act's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the Clean Air Act, along with EPA regulations and policy, has become much more specific, thereby removing much of the states' discretion to craft their own air quality control programs.

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas. However, attainment of NAAQS for one pollutant--ozone--has proven problematic. While ozone is needed at the earth's outer atmospheric layer to shield out harmful rays from the sun, excess concentrations at the surface have an adverse effect on human health and welfare. Ozone is formed by a chemical reaction between volatile organic compounds (VOCs), nitrogen oxides (NO_x), and sunlight. When VOC and NO_x emissions from mobile sources and stationary sources are reduced, ozone is reduced.

Congress enacted the 1977 Amendments to the Clean Air Act in order to address unsuccessful SIPs and areas that had not attained the NAAQS (that is, nonattainment areas). Although SIP revisions submitted pursuant to the requirements of the 1977 amendments did achieve some progress in eliminating nonattainment areas, some areas remained.

In 1990 Congress once again enacted comprehensive amendments to the Act to address SIP requirements for nonattainment areas. The new Act established a process for evaluating the air quality in each region and identifying and classifying each nonattainment area according to the severity of its air pollution problem. Nonattainment areas are classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification (or class) is subject to successively more stringent control measures. Areas in a higher classification of nonattainment must meet the mandates of the lower classifications plus the more stringent requirements of their class. In addition to the general SIP-related sanctions, nonattainment areas have their own unique sanctions. If a particular area fails to attain the federal standard by the legislatively mandated attainment date, EPA is required to reassign it to the next higher classification level (denoting a worse air quality problem), thus subjecting the area to more stringent air pollution control requirements. The Clean Air Act includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

The new Act required EPA, based on the air quality data from each state, to propose geographic boundaries and pollution classification levels for all nonattainment areas to each state's governor. If states disagreed with EPA's proposals, they had the opportunity to propose different boundaries; however, EPA had the authority to make the final decision.

The process provided in the new Act yielded three nonattainment areas for Virginia. The classifications for Virginia's nonattainment areas were marginal for the Hampton Roads

Nonattainment Area, moderate for the Richmond Nonattainment Area, and serious for the Northern Virginia Nonattainment Area.

Once the nonattainment areas were defined, each state was then obligated to submit a SIP demonstrating how it would attain the air quality standards in each nonattainment area. First, the new Act requires that certain specific control measures and other requirements be adopted and included in the SIP; a list of those that necessitated the adoption of state regulations is provided below. In addition, the state had to demonstrate that it would achieve a VOC emission reduction of 15%. Finally, the SIP had to include an attainment demonstration by photochemical modeling (including annual emission reductions of 3% from 1996 to 1999) in addition to the 15% emission reduction demonstration. In cases where the specific control measures shown below were inadequate to achieve the emission reductions or attain the air quality standard, the state was obligated to adopt other control measures as necessary to achieve this end.

ALL AREAS

- correct existing VOC regulatory program (controls on certain sources identified in EPA control technology guidelines)
- requirement for annual statements of emissions from industries
- permit program for new industry and expansions (with variable major source definition, variable offset ratio for addition of new pollution, and special requirements for expansions to existing industry in serious areas)
- procedures to determine if systems level highway plans and other federally financed projects are in conformity with air quality plans

MODERATE AND ABOVE AREAS

- requirement for controls for all major (100 tons per year) VOC sources
- requirement for vapor recovery controls for emissions from filling vehicles with gasoline (stage II)
- requirement for controls for all major (100 tons per year) NO_x sources
- case by case control technology determinations for all major VOC and NO_x sources not covered by a EPA control technology guideline

SERIOUS AND ABOVE AREAS

- requirement for controls for all major (50 tons per year) VOC sources
- requirement for controls for all major (50 tons per year) NO_x sources

- enhanced monitoring (source emissions) program
- correct existing motor vehicle emissions inspection and maintenance (I&M) program
- enhanced motor vehicle emissions I&M program
- clean fuel fleet vehicle program
- oxygenated fuels program

Since the initial classification of these three areas, Northern Virginia has remained a nonattainment area. Richmond and Hampton Roads were able to achieve the 1-hour ozone standard and were redesignated as maintenance areas. As a condition of being redesignated, each area established a plan that included specific strategies to maintain their air quality. No additional new requirements were necessary provided that an area did not measure ozone concentrations above allowable levels. In the event that an area did measure ozone concentrations above allowable levels, each maintenance plan included contingency measures. The contingency measures consisted of a scheduled series of additional steps to be taken in the event of ozone exceedances or violations. EPA redesignated Hampton Roads as a maintenance area and approved its maintenance plan and associated contingency measures on June 26, 1997 (62 FR 34408 at 40 CFR 52.2420(c)(117)).

From 1999 to 2001, however, the Hampton Roads area experienced four exceedances at the Tidewater Community College monitor in Suffolk, resulting in a violation of the 1-hour ozone standard. (More than three exceedances in a three-year period result in a violation.) Consequently, EPA Region III notified Virginia by letter dated October 29, 2001, that the Commonwealth is now obligated to implement the contingency measures of the 1-hour maintenance plan established for this area.

Since the initial regulatory promulgation of the volatile organic compounds emissions control areas in 1979, James City County, York County, Poquoson City, and Williamsburg City have been exempt from the emission standards for VOCs in 9 VAC 5 Chapter 40. These standards apply to existing sources conducting activities such as asphalt application, solvent metal cleaning, metal can coating, and graphic arts operations. Originally, these four jurisdictions were determined to be too rural to make a significant contribution to air pollution in the area. Two decades later, however, they have undergone significant development and are no longer rural. In light of the Hampton Roads area's violation of the 1-hour ozone standard, the exemption of these jurisdictions from the VOC emission standards must be now rescinded.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This

statement should provide a section-by-section description of changes implemented by the proposed regulatory action. Where applicable, include cross-referenced citations when the proposed regulation is intended to replace an existing regulation.

Currently, Chapter 40 of the Regulations for the Control and Abatement of Air Pollution contains a number of regulations with VOC emission standards. The geographic applicability of these rules is defined by establishing VOC emissions control areas in a list located in 9 VAC 5-20-206 of Chapter 20. This list currently exempts existing stationary sources in four jurisdictions within the Hampton Roads VOC Emissions Control Area: James City County, York County, Poquoson City, and Williamsburg City. The applicable VOC standards are set forth in the following articles in Chapter 40:

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The proposed amendments will remove the exemptions for sources in the four localities in order to render those sources subject to the VOC standards for existing sources, as is the case in the other jurisdictions within the Hampton Roads Emissions VOC Control Area.

Alternatives

Please describe the process by which the agency has considered less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

As provided in the public participation procedures of the State Air Pollution Control Board, the Department included, in the Notice of Intended Regulatory Action, a description of the Department's alternatives and a request for comments on other alternatives and the costs and benefits of the Department's alternatives or any other alternatives that the commenters provided.

Following the above, alternatives to the proposed regulation amendments were considered by the Department. The Department 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 Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulation to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to enlarge the scope of the Hampton Roads volatile organic compounds emissions control area in light of Virginia's obligation to implement contingency measures as a result of this area's violation of the 1-hour ozone standard.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because Virginia's failure to implement its contingency plan could jeopardize the Commonwealth's authority to make its own air quality policy decisions, could result in the EPA assuming control of Virginia's air quality plan, and could result in the levying of sanctions on Virginia such as the loss of federal funds for highways or more restrictive requirements for new industry.

3. Take no action to amend the regulation. This option is not being selected because Virginia's failure to implement its contingency plan could jeopardize the Commonwealth's authority to make its own air quality policy decisions, could result in the EPA assuming control of Virginia's air quality plan, and could result in the levying of sanctions on Virginia such as the loss of federal funds for highways or more restrictive requirements for new industry.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No public input was received during the public comment period for this intended regulatory action.

Clarity of the Regulation

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

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

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated within three years after its effective date.

The specific and measurable goals the proposed regulation amendments are intended to achieve are as follows:

1. To protect public health and/or welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To ensure that owners comply with air pollution emission limits and control technology requirements in order to control levels of volatile organic compound emissions being emitted into the ambient air.
3. To prohibit emissions which would contribute to nonattainment of the national air quality standards or interference with maintenance of the standards.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

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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