



Periodic Review Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	9VAC5-221
Regulation title	Variance for Rocket Motor Test Operations at Atlantic Research Corporation Gainesville Facility
Document preparation date	November 7, 2011

This form is used when the agency has completed a periodic review of a regulation. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

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. Section 10.1-1307, among other activities, grants the board the ability to adopt variances.

This variance was adopted by the State Air Pollution Control Board in order to relieve the Atlantic Research Corporation (ARC) rocket test facility located in Gainesville, Virginia from compliance with the board's standards for visible emissions in 9VAC5-40-80 and 9VAC5-50-80 during their rocket motor testing operations. The standards for particulate matter with which ARC had to comply required the company to certify compliance through a determination made using the U.S. Environmental Protection Agency (EPA) "Method for the Visual Determination of the Opacity of Emissions from Stationary Sources" (40 CFR Part 60, Appendix A, Method 9) or an alternate method. Method 9, however, was inappropriate because most of ARC's tests lasted less than the 6-minute minimum specified for the opacity readings that demonstrate a source's compliance with the standards. Thus, an inspector could not observe the source's normal performance for the required duration of the test. In addition, the EPA-approved alternate method could not be substituted. A variance eliminated this problem by replacing the opacity standards with a particulate matter limit of 714 pounds per hour. Thus, ARC was relieved from the problem of demonstrating compliance with the opacity standards while still meeting state air quality standards.

Since the variance was granted, the Gainesville ARC facility has been permanently shut down, and there is therefore no longer a need for the variance.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Alternatives for achieving the purpose of the regulation have been considered by the department. The department has determined that the repeal of the regulation (the third alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives considered, are discussed below.

1. Retain the regulation without amendment. This option was not selected because the facility for which the variance was adopted has been permanently shut down.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state mandate, and associated regulations and policies. This option was not selected because the facility for which the variance was adopted has been permanently shut down.
3. Repeal the regulation. This option was selected because the regulation is no longer needed. Repealing a regulation that is no longer needed will contribute to the overall goal of making the regulations necessary, up-to-date, and unambiguous.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comment was received on this regulation. An informal advisory group was not formed to assist with conducting the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Although the regulation was originally needed in order to protect public health and welfare, the facility for which it was developed has been permanently shut down and there are no longer any particulate matter emissions being emitted from that facility to control. The regulation is no longer needed and will be repealed.

Result

Please state that the agency is recommending that the regulation be repealed.

Since the facility the regulations were adopted to regulate has closed, this regulation is no longer needed and will be repealed utilizing the variance procedures of the State Air Pollution Control Law.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

This regulation is no longer needed since the facility for which the variance was developed has been permanently shut down. Repeal of this regulation will have no effect on any facility.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

It is not anticipated that repeal of the regulation will have a direct impact on families.