ARTICLE 6

The attached version of the MNSR program regulation has a highlighting system, as explained below, to identify whether the provisions of the regulation are to be or not to be included in the SIP.

- Those existing provisions that are currently not in the SIP and the DEQ wants them to remain out of the SIP are highlighted in pink.
- Those existing provisions that are currently not in the SIP and the DEQ wants them to be in the SIP are highlighted in yellow.
- Those new provisions that the DEQ wants to be out of the SIP are highlighted in green.
- Those existing provisions that are currently in the SIP and the DEQ wants them to be out of the SIP are highlighted in ~~orange~~. blue

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9VAC5-80-1100. Applicability.

Article 6. Permits for New and Modified Stationary Sources

A. Except as provided in subsection C of this section, the provisions of this article apply to (i) the construction of any new stationary source or any project (which includes any addition or replacement of an emissions unit, any modification to an emissions unit or any combination of these changes), and (ii) the reduction of any stack outlet elevation at any stationary source.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Except as provided in subdivision 3 of this subsection, the provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of 9VAC5-80-1105.

1. Exemption from the requirement to obtain a minor NSR permit shall not relieve any owner of the responsibility to comply with any other applicable provisions of regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

2. Any stationary source, emissions unit or facility which is exempt from the provisions of this article based on the criteria in 9VAC5-80-1105 but which exceeds the applicability thresholds for any applicable emission standard in 9VAC5-40 (Existing Stationary Sources) if it were an existing source or any applicable standard of performance in 9VAC5-50 (New and Modified Stationary Sources) shall be subject to the more restrictive of the provisions of either the emission standard in 9VAC5-40 (Existing Stationary Sources) or the standard of performance in 9VAC5-50 (New and Modified Stationary Sources).

3. Any new stationary source or project that would be subject to the provisions of this article except for being exempt based on one or more of the criteria in 9VAC5-80-1105 may opt to be subject to this article notwithstanding the exemptions in 9VAC5-80-1105. The provisions of this article shall apply to the new stationary source or project as if the applicable exemption criteria did not apply. Opting in to the minor NSR program shall not affect the applicability of such exemptions to any subsequent project.

D. Except as provided in 9VAC5-80-1105 C 3 and D 3, fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article.

E. Where construction of a new stationary source or a project is accomplished in contemporaneous increments that individually are not subject to approval under this article and that are not part of a program of construction of a new stationary source or project in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of any particular change under the provisions of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before commencing construction on the particular change and the date that the emissions increase from the particular change occurs.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a stationary source which, except for the pattern of ownership or development, would otherwise require a minor NSR permit.

G. No provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article.

H. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources" or "stationary sources" are applicable to the construction, relocation, replacement, or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of the major new source review program.

2. Provisions referring to "major stationary sources" are applicable to the construction, relocation, or replacement of all major stationary sources subject to this article. Provisions referring to "major modifications" are applicable to major modifications of major stationary sources subject to this article.

3. In cases where the provisions of the major new source review program conflict with those of this article, the provisions of the major new source review program shall prevail.

4. Provisions referring to "state and federally enforceable" or "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a minor NSR permit designated state-only enforceable under 9VAC5-80-1120 F.

I. For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and the applicable article of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources). Implementation of the federal hazardous air pollutant new source review program shall be independent of applicability and exemption criteria of this article. Additional details may be found in subdivisions 1, 2, and 3 of this subsection. Minor NSR permits shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9VAC5-80-1150 and 9VAC5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 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. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9VAC5 60 60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. The provisions of 40 CFR 63.5 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. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60. Any information regarding how minor NSR permits are to be issued to a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program under the provisions of this article may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. The provisions of 40 CFR 63.40 through 40 CFR 63.44 for issuing approvals to construct a new source or reconstruct a source listed in the source category schedule for standards and to construct a new major source or reconstruct a major source even if the source category is not listed in the source category schedule for standards. These provisions of the federal hazardous air pollutant new source review program shall not be implemented through this article but shall be implemented through Article 7 (9VAC5-80-1400 et seq.) of this part.

J. Unless otherwise approved by the board or prescribed in the regulations of the board, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-1160 B prior to November 7, 2012,. Any minor NSR permit applications that have not been determined to be complete as of November 7, 2012, shall be subject to the new provisions of this article.

K. The provisions of 40 CFR Parts 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources) and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

L. The provisions of 40 CFR Parts 51, 58, 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

M. Particulate matter ($PM_{2.5}$) emissions and particulate matter (PM_{10}) emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in minor NSR permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10}

issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; Clean Air Act (§§ 110, 112, 165, 173, 182 and Title V); 40 CFR Parts 51, 61, 63, 70 and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 22, Issue 23, eff. September 1, 2006; Volume 25, Issue 06, eff. December 31, 2008; Volume 29, Issue 03, eff. November 7, 2012.

9VAC5-80-1105. Permit Exemptions.

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

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 board 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 board 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 board.

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

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 board 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 board.

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

(6) The owner notifies the board, 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 board.

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 board 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.

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.

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.

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 board 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 board 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 board of (i) the actual date of commencing the first pollutant-emitting operation and (ii) the actual date of shutdown of the temporary facility. Notifications shall be postmarked 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 but not limited to 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.

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_2S)	9 tpy
Total Reduced Sulfur (including H_2S)	9 tpy
Reduced Sulfur Compounds (including H_2S)	9 tpy
Municipal waste combustor organics (measured as total tetra-throughocta-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-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 (PM_{10} or $PM_{2.5}$) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission

rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the board, 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:

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_2S)	9 tpy
Total Reduced Sulfur (including H_2S)	9 tpy
Reduced Sulfur Compounds (including H_2S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-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 (PM_{10} or $PM_{2.5}$) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the board, 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 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.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5 CHAPTER 80
PERMITS FOR STATIONARY SOURCES

Part II
Permit Procedures

ARTICLE 6
Permits for New and Modified Stationary Sources

9VAC5-80-1110. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Addition" means the construction of a new emissions unit at or the relocation of an existing emissions unit to a stationary source.

"Affected emissions units" means the following emissions units, as applicable:

1. For a new stationary source, all emissions units.

2. For a project, the added, modified, and replacement emissions units that are part of the project.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, § 111(d), or § 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

2. Any term or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program. However, those terms or conditions designated as state-only enforceable pursuant to 9VAC5-80-1120 F or 9VAC5-80-820 G shall not be applicable

federal requirements.

3. Any emission standard, alternative emission standard, alternative emissions limitation, equivalent emissions limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a federal operating permit.

12. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

13. Any standard or other requirement under § 126 (a)(1) and (c) of the federal Clean Air Act.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of

building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location or relocation of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings, or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained, or coated.

"Commence," as applied to the construction of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the unit, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in the uncontrolled emission rate.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to, lumber, wire, sheetrock, broken brick, shingles, glass, pipe, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include, but are not limited to, stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures or their foundations, or both, and includes the same materials as construction wastes.

"Diesel engine" means, for the purposes of 9VAC5-80-1105 A 1 b, any internal combustion engine that burns diesel or #2 fuel oil to provide power to processing equipment for a vegetative waste recycling/mulching operation.

"Emergency" means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner or operator of a facility including:

1. A failure of the electrical grid,

2. On-site disaster or equipment failure,

3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions, or

4. An ISO-declared emergency, where an ISO emergency is:

a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property;

b. Capacity deficiency or capacity excess conditions;

c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel;

d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state; or

e. An abnormal event external to the ISO service territory that may require ISO action.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions limitation" means a requirement established by the board that

limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant.

"Enforceable as a practical matter" means that the permit contains emissions limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent;

2. Contain a legal obligation for the owner to adhere to the terms and conditions;

3. Do not allow a relaxation of a requirement of the implementation plan;

4. Are technically accurate and quantifiable;

5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Existing stationary source" means any stationary source other than a new stationary source.

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of the construction, reconstruction or modification of any stationary source in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 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.

2. The provisions of 40 CFR 63.5 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.

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act, as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions (unless expressly designated as state-only enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.

4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.

5. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.

6. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

a. The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.

b. The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not federally enforceable by EPA.

c. The operating permit program requires that all emissions

limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise federally enforceable.

d. The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

e. The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

7. Limitations and conditions in a regulation of the board or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-1250.

"Hazardous air pollutant" means (i) any air pollutant listed in §112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63, and (ii) incorporated by reference into the regulations of the board at 9VAC5-60-92 B.

"Independent system operator" or "ISO" means a person that may receive or has received, by transfer pursuant to § 56-576 of the Code of Virginia, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the

Commonwealth.

"Major modification" means any project at a major stationary source that would result in a significant emissions increase in any regulated air pollutant. For projects, the emissions increase may take into consideration any state and federally enforceable permit conditions that will be placed in a permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source" means any stationary source that emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant. For new stationary sources, the potential to emit may take into consideration any state and federally enforceable permit conditions that will be placed in a permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

"Minor new source review (NSR) permit" means a permit issued pursuant to this article.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects that are not subject to review under the major new source review program; (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations; and (iii) codified in this article. The minor NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"Modification" means any physical change in, or change in the method of operation of an emissions unit that increases the uncontrolled emission rate of any regulated air pollutant emitted into the atmosphere by the unit or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted. The following shall not be considered physical changes or changes in the method of operation under this definition:

1. Maintenance, repair and replacement of components that the board determines to be routine for a source type and which does not fall within the

definition of "replacement";

2. An increase in the throughput or production rate of a unit (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter), if that increase does not exceed the operating design capacity of that unit;

3. An increase in the hours of operation (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter);

4. Use of an alternative fuel or raw material (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter) if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the emissions unit was designed to accommodate that alternative use. A unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;

5. Use of an alternative fuel or raw material that the emissions unit is approved to use under any new source review permit;

6. The addition, replacement or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws, permit conditions, or regulations is replaced by a system or device which the board considers to be less efficient in the control of air pollution emissions;

7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not (i) necessary for the source to comply with any applicable air pollution control laws, permit conditions or regulations or (ii) used to avoid any applicable new source review program requirement; or

8. A change in ownership at a stationary source.

"Necessary preconstruction approvals or permits" means those permits or approvals required under the NSR program that is part of the implementation plan.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants),

165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in this article, Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part. The NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"New stationary source" means any stationary source to be constructed at or relocated to an undeveloped site.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); ~~or~~

2. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers)~~.~~ ; or

3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

An internal combustion engine is not a nonroad engine if ~~the~~ :

1. The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act~~.~~ ; or

2. The engine otherwise included in subdivision 3 above remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.

For purposes of this definition, a location is any single site at a building, structure, facility or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at the single location approximately three months (or more) each year. This subdivision does not apply to an engine after the engine is removed from the location.

"Plantwide applicability limitation (PAL)" means an emissions limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865 or 9VAC5-80-2144.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle. Indications of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Precursor pollutant" means the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone.

(2) Sulfur dioxide is a precursor to PM2.5.

(3) Nitrogen oxides are presumed to be precursors to PM2.5 in all PM2.5, unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM2.5 concentrations.

(4) Volatile organic compounds and ammonia are presumed not to be precursors to PM2.5, unless the board determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM2.5 concentrations.

"Process operation" means any method, form, action, operation or treatment of manufacturing or processing, including any storage or handling of materials or products before, during or after manufacturing or processing.

"Project" means any change at an existing stationary source consisting of the addition, replacement, or modification of one or more emissions units.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information (exclusive of confidential information) for a new stationary source or project, the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" means, for the sole purposes of 9VAC5-80-1210 A, B, and C, the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;

2. The replacement significantly extends the life of the emissions unit; and

3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;

2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;

3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and

4. Any economic or technical limitations on compliance with applicable standards of performance that are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.

2. Any pollutant (including any associated precursor pollutant) for which an ambient air quality standard has been promulgated.

3. Any pollutant subject to any standard promulgated under 40 CFR

Part 60.

4. Any pollutant subject to a standard promulgated under or other requirements established under 40 CFR Part 61 and any pollutant regulated under 40 CFR Part 63.

5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Replacement" means the substitution of an emissions unit for an emissions unit located at a stationary source, which will thereafter perform the same function as the replaced emissions unit.

"Secondary emissions" means emissions which occur or would occur as a result of the construction or operation of a new stationary source or an emissions unit, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must affect the same general areas as the stationary source that causes the secondary emissions. Secondary emissions include emissions from any off site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source or emissions unit. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

1. In reference to an emissions increase, an increase in potential to emit that would equal or exceed any of the following rates:

a. In ozone nonattainment areas classified as serious or severe in 9VAC5-20-204:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (PM)	25 tpy
Particulate Matter (PM_{10})	15 tpy
Particulate Matter ($PM_{2.5}$)	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy

b. In all other areas:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (PM)	25 tpy
Particulate Matter (PM_{10})	15 tpy
Particulate Matter ($PM_{2.5}$)	10 tpy
Volatile organic compounds	40 tpy
Lead	0.6 tpy

2. In reference to an emissions increase for a regulated air pollutant not listed in subdivision 1 of this definition, there is no emissions rate that shall be considered significant.

3. If the particulate matter (PM_{10} or $PM_{2.5}$) emissions for a stationary source or emissions unit can be determined in a manner acceptable to the board and the emissions increase is determined to be significant using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source or emissions unit shall be considered to be significant for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine whether the emissions increase is significant.

"Significant emissions increase" means, for a regulated air pollutant, an increase in emissions that is significant for that pollutant.

"Site" means one or more contiguous or adjacent properties under the control of the same person (or persons under common control).

"Source category schedule for standards" means the schedule (i) issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and (ii) incorporated by reference into the regulations of the board in subdivision 2 of 9VAC5-60-92.

"Space heater" means any fixed or portable, liquid or gaseous fuel-fired, combustion unit used to heat air in a space, or used to heat air entering a space, for the purpose of maintaining an air temperature suitable for comfort, storage, or equipment operation. Space heaters do not include combustion units used primarily for the purpose of conditioning or processing raw materials or product, such as driers, kilns, or ovens.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility or installation that emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any watercraft or any nonroad engine. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., that have the same two-digit code) as described in the "Standard Industrial Classification Manual" (see 9VAC5-20-21).

"Synthetic minor source" means a stationary source that otherwise has the potential to emit regulated air pollutants in amounts that are at or above those for major stationary sources, as applicable, but is subject to restrictions such that its potential to emit is less than such amounts for major stationary sources. Such restrictions must be enforceable as a practical matter. The term "synthetic minor source" applies independently for each regulated air pollutant that the source has the potential to emit.

"Temporary facility" means a facility that (i) is operated to achieve a specific objective (such as serving as a pilot test facility, a process feasibility project, or a remediation project) and (ii) does not contribute toward the commercial production of any product or service (including byproduct and intermediate product) during the operational period. Portable emissions units covered by the exemption under 9VAC5-80-1105 A 1 c and facilities used to augment or enable routine production are not considered temporary facilities for the purposes of this definition.

"Toxic pollutant" means any air pollutant (i) listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63 and (ii) incorporated by reference into the regulations of the board at subdivision 1of 9VAC5-60-92, or any other air pollutant that the board determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®.

"Uncontrolled emission rate" means the emission rate from an emissions unit when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment that is not vital to its operation, except that its use enables the owner to conform to applicable air pollution control laws

and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the emissions unit, unless the emissions unit or stationary source is subject to state and federally enforceable permit conditions that limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted, stored, or processed may be used in determining the uncontrolled emission rate of an emissions unit or stationary source. The uncontrolled emission rate of a stationary source is the sum of the uncontrolled emission rates of the individual emissions units. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

"Undeveloped site" means any site or facility at which no emissions units are located at the time the permit application is deemed complete, or at the time the owner begins actual construction, whichever occurs first. An undeveloped site also includes any site or facility at which all of the emissions units have been determined to be shut down pursuant to the provisions of 9VAC5-20-220.

"Vegetative waste" means decomposable materials generated by land clearing activities and includes shrub, bush and tree prunings, bark, brush, leaves, limbs, roots, and stumps. Vegetative waste does not include construction or demolition waste or any combination of them.

"Vegetative waste recycling/mulching operation" means any activity related to size reduction or separating, or both, of clean wood or vegetative waste, or both, by grinding, shredding, chipping, screening, or any combination of them.

9VAC5-80-1120. General.

A. No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.

B. Except as provided in 9VAC5-80-1105 A 1 c, no owner or other person shall relocate any stationary source or emissions unit from one stationary source to another without first obtaining from the board a minor NSR permit to relocate the stationary source or unit.

C. Except as provided in 9VAC5-80-1105 A 2 b, no owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any regulated air pollutant from an emissions unit without first obtaining a minor NSR permit from the board.

D. The board will take actions to combine permit terms and conditions as provided in 9VAC5-80-1255. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-1260 as explained in subsection E of this section.

E. The board will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1260. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection D of this section.

F. All terms and conditions of any minor NSR permit shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any minor NSR permit shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources), or Article 4 (9VAC5-60-200 et seq.) or Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any minor NSR permit that is not federally enforceable shall be marked in the permit as state-only enforceable and shall be enforceable only by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

G. Nothing in the regulations of the board shall be construed to prevent the board from granting minor NSR permits for programs of construction of a new stationary source or project in planned incremental phases. In such cases, all uncontrolled emission rate increases from all emissions

units covered by the program shall be added together for determining the applicability of this article.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

9VAC5-80-1130. (Reserved)

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002.

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9VAC5-80-1140. Applications.

A. A single application is required identifying at a minimum each emissions unit in the new stationary source or the project, or affected by the stack outlet elevation reduction. The application shall be submitted according to procedures acceptable to the board.

B. A separate application is required for each new stationary source or project.

C. For new stationary sources or for projects with phased development, a single application should be submitted covering the entire new stationary source or project.

D. Any application, form, report, or certification submitted to the board shall comply with the provisions of 9VAC5-20-230.

E. Any application submitted pursuant to this article shall contain a certification signed by the applicant as follows:

"I certify that I understand that the existence of a minor new source review permit does not shield the source from potential enforcement of any regulation of the board governing the major new source review program and does not relieve the source of the responsibility to comply with any applicable provision of the major new source review program regulations."

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1150. Application Information Required.

A. The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of stationary sources and emissions units subject to this article.

B. Each application for a minor NSR permit shall include such information as may be required by the board to determine the effect of the new stationary source or emissions unit on the ambient air quality and to determine compliance with any emission standards which are applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated air pollutants.

a. A minor NSR permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit or group of emissions units in the new stationary source or project or affected by the stack outlet elevation reduction. The permit application shall include a description of all changes in uncontrolled emissions from the project.

b. Emissions shall be calculated as required in the minor NSR permit application form or instructions or in a manner acceptable to the board.

c. Fugitive emissions shall be included in the minor NSR permit application to the extent quantifiable.

4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

6. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

7. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the new stationary source or the project, or the stack outlet

elevation reduction, including the submission of measured air quality data at the proposed site prior to construction. Such measurements shall be accomplished using procedures acceptable to the board.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

9VAC5-80-1160. Action on Permit Application.

A. Prior to submitting an application for processing under subsections B through F of this section, the owner may request a nonbinding applicability determination as to which particular provisions of the new source review program are applicable. The request for the applicability determination shall include sufficient information as may be necessary for the board to make an applicability determination and may include the same information required for an application. Within 30 days after receipt of a request, the board will (i) notify the applicant of the applicability determination or (ii) provide a determination that the information provided by the owner is insufficient to make an applicability determination, along with the identification of any deficiencies.

B. Within 30 days after receipt of an application, the board will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the board in writing and will include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection C of this section shall be the date on which the board received all required information, including any applicable permit fees, and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

C. The board will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for these steps is normally 90 days following receipt of a complete application. If a public hearing is required, processing time is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-1190 and the preliminary determination of the board. This step may constitute the final step if the provisions of 9VAC5-80-1170 concerning public participation are not applicable.

2. When required, complete the public participation requirements in accordance with 9VAC5-80-1170.

3. Consider the public comments received in accordance with 9VAC5-80-1170.

4. Complete the final review and analysis and the final determination of the board.

D. The board will normally take final action on an application after completion of the applicable steps in subsection C of this section, except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-1170 F, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

E. The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission standards. These emission standards are applicable during any emission testing conducted in accordance with 9VAC5-80-1200.

F. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

G. Within five days after notification to the applicant pursuant to subsection E of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9VAC5-80-1170 E 1.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; Clean Air Act (§§ 110, 112, 165, 173, 182 and Title V); 40 CFR Parts 51, 61, 63, 70 and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 25, Issue 06, eff. December 31, 2008; Volume 29, Issue 03, eff. November 7, 2012.

9VAC5-80-1170. Public Participation.

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1160 B, the applicant for a minor NSR permit for a new major stationary source shall notify the public of the proposed major stationary source in accordance with subsection B of this section.

B. The public notice required by subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

1. The source name, location, and type;

2. The pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;

3. The control technology proposed to be used at the time of the publication of the notice; and

4. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

C. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a minor NSR permit may implement an alternative plan for notifying the public to that required in subsections A and B of this section.

D. Prior to the decision of the board, minor NSR permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection E of this section.

1. Applications for stationary sources of hazardous air pollutants requiring a case-by-case maximum achievable control technology determination under Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Applications for new major stationary sources and major modifications.

3. Applications for projects that would result in an increase in the potential to emit of any regulated air pollutant that would equal or exceed 100 tons per year, considering any state and federally enforceable permit conditions that will be placed on the source by a minor NSR permit.

4. Applications for new stationary sources or projects that have the potential for public interest concerning air quality issues, as determined by the board. The identification of such sources shall be made using the following nonexclusive criteria:

a. Whether the new stationary source or project is opposed by any person;

b. Whether the new stationary source or project has resulted in adverse media;

c. Whether the new stationary source or project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and

d. Whether the new stationary source or project has generated adverse comment by a local official, governing body or advisory board.

5. Applications for stationary sources for which any provision of the minor NSR permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by subdivisions 1 and 2 of the GEP definition. The demonstration specified in subdivision 3 of the GEP definition and required by 9VAC5-50-20 H 3 shall be included in the application.

E. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. For permits subject to § 10.1-1307.01 of the Code of Virginia, written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

1. Information on the minor NSR permit application (exclusive of confidential information under 9VAC5-170-60), as well as the preliminary review and analysis and preliminary determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region. Any demonstration included in an application specified in subdivision D 5 of this section shall be available for public inspection during the public comment period.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

F. Following the initial publication of the notice required under subsection E of this section, the board will receive written requests for direct consideration of the minor NSR permit application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:

1. The name, mailing address, and telephone number of the requester.

2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person).

3. The reason why direct consideration by the board is requested.

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial or revision of the permit in question.

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

G. The board will review any request made under subsection F of this section, and will take final action on the request as provided in 9VAC5-80-1160 D.

H. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the board shall process the minor NSR permit application using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; Clean Air Act (§§ 110, 112, 165, 173, 182 and Title V); 40 CFR Parts 51, 61, 63, 70 and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 25, Issue 06, eff. December 31, 2008; Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1180. Standards and Conditions for Granting Permits.

A. No minor NSR permit will be granted unless it is shown to the satisfaction of the board that the source will comply with the following standards:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9VAC5-50 (New and Modified Stationary Sources) ~~and with emission standards prescribed under 9VAC5-60 (Hazardous Air Pollutant Sources);~~

2. For sources subject to the federal hazardous air pollutant new source review program, the source shall be designed, built, and equipped to comply with the applicable emission standard and other requirements prescribed in 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), as applicable;

3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and

4. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.

B. Minor NSR permits may contain emission caps provided the caps are made enforceable as a practical matter using the elements set forth in subsection D of this section. The emission caps may be considered in determining whether a stationary source is a synthetic minor source.

C. Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include limits on the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.

3. The standard may prescribe, as an alternative to or a supplement to a limit prescribed under subdivision 1 of this subsection, equipment, work practice, fuels specification, process materials, maintenance, or operational standards, or any combination of them.

D. Minor NSR permits will contain, but need not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. Limits on fuel sulfur content.

b. Limits on production rates with time frames as appropriate to support the emission standards.

c. Limits on raw material usage rate.

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

4. Specifications for air pollution control equipment installed or to be installed. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but need not be limited to, any of the following:

a. Pressure indicators and required pressure drop.

b. Temperature indicators and required temperature.

c. pH indicators and required pH.

d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Performance test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1190. Application Review and Analysis.

No minor NSR permit shall be granted unless compliance with the standards in 9VAC5-80-1180 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications for new stationary sources and projects shall be subject to the following review and analysis:

a. A control technology review to determine if the emissions units will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9VAC5-50 (New and Modified Stationary Sources).

b. An air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.

2. Applications for stationary sources of toxic air pollutants shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9VAC5-60 (Hazardous Air Pollutant Sources).

3. Applications under 9VAC5-80-1120 C (concerning stack outlet elevation reduction) shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions as may be deemed appropriate by the board.

4. Applications for sources subject to the federal hazardous air pollutant new source review program shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1200. Compliance Determination and Verification by Performance Testing.

A. For stationary sources other than those specified in subsection B of this section, compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.

B. For stationary sources of toxic pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9VAC5-60-20 and shall be verified by emission tests in accordance with the provisions of 9VAC5-60-30.

C. Testing required by subsections A and B of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with one or, upon request, more copies of a written report of the results of the tests.

D. For sources subject to the provisions of 40 CFR Part 60, 61 or 63, the compliance determination and performance test requirements of subsections A, B and C of this section shall be met as specified in those parts of Title 40 of the Code of Federal Regulations.

E. For sources other than those specified in subsection D of this section, the requirements of subsections A, B and C of this section shall be met unless the board:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

2. Approves the use of an equivalent method;

3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;

4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the source to perform in compliance with applicable standards; or

5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

F. The provisions for the granting of waivers under subsection E of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the board to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

G. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirement of the implementation plan, or any other applicable federal requirement promulgated under the federal Clean Air Act.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

9VAC5-80-1210. Permit Invalidation, Suspension, Revocation and Enforcement.

A. In addition to the sources subject to this article, the provisions of this section shall apply to sources specified below:

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.

B. A minor NSR permit shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within 18 months from the date the minor NSR permit is granted.

C. A minor NSR permit shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of the phased construction of a new stationary source or project; each phase must commence construction within 18 months of the projected and approved commencement date.

D. The board may extend the periods prescribed in subsections B and C of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted using the procedures for minor amendments in 9VAC5-80-1280.

E. Any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source subject to this section who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

F. Minor NSR permits shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

G. The board may revoke any minor NSR permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emissions limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

H. The board may suspend, under such conditions and for such period of time as the board may prescribe, any minor NSR permit for any of the grounds for revocation contained in subsection G of this section or for any other violations of the regulations of the board.

I. The permittee shall comply with all terms and conditions of the minor NSR permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation.

J. Violation of the regulations of the board shall be grounds for revocation of minor NSR permits and are subject to the civil charges, penalties and all other relief contained in Part V (9VAC5-170-120 et seq.) of 9VAC5-170 (Regulation for General Administration) and the Virginia Air Pollution Control Law.

K. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a minor NSR permit, or to render a minor NSR permit invalid.

L. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a minor NSR permit is invalid or revoked prior to any final decision rendered under subsection K of this section.

M. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a minor NSR permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

N. Except with respect to minor NSR permits issued in accordance with Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), the provisions of subsections B, C, and D shall not apply to sources subject to the federal hazardous air pollutant new source review program.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

9VAC5-80-1220. Existence of Permit No Defense.

The existence of a minor NSR permit shall not constitute defense to a violation of the Virginia Air Pollution Control Law or the regulations of the board and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1230. Compliance with Local Zoning Requirements.

No provision of this part or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the board of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

Statutory Authority

§ 10.1-1308 of the Code of Virginia.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002.

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9VAC5-80-1240. Transfer of Permits.

A. No person shall transfer a minor NSR permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current minor NSR permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current minor NSR permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a minor NSR permit from one location to another shall not apply to the relocation of portable emissions units that are exempt from the provisions of this article by 9VAC5-80-1105 A 1 c.

E. The provisions of this section concerning the transfer of a minor NSR permit from one piece of equipment to another shall not apply to the replacement of an emissions unit that is exempt from the provisions of this article by 9VAC5-80-1105 A 2 a.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1250. General Permits.

A. The requirements for issuance of a general permit are as follows:

1. The board may issue a general permit covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:

a. All stationary sources or emissions units in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.

c. Stationary sources or emissions units shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Stationary sources or emissions units operating under the authority of a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General permits shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.

4. General permits shall be issued in accordance with § 2.2-4006 A 8 of the Administrative Process Act.

5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit;

b. The criteria to be used in determining which stationary sources or emissions units qualify for coverage under the general permit;

c. A brief description of the stationary source or emissions unit category that the department believes qualifies for coverage under the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category;

d. A brief description of the application process to be used by owners of stationary sources or emissions units to request coverage under the general permit; and

e. A brief description of the public comment procedures.

B. The requirements for application for coverage under a general permit are as follows:

1. Stationary sources or emissions units which qualify for coverage under a general permit may apply to the board for coverage under the terms of the general permit. Stationary sources or emissions units that do not qualify for coverage under a general permit shall apply for a minor NSR permit.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Stationary sources or emissions units that qualify for coverage under the general permit after coverage is granted to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall grant authority to operate under the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.

C. The requirements for granting authority to operate under a general permit are as follows:

1. The board shall grant authority to operate under the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.

2. Granting authority to operate under a general permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-1170.

3. A response to each general permit application may be provided at the discretion of the board. The general permit may specify a reasonable time period after which the owner of a stationary source or emissions unit that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Stationary sources or emissions units authorized to operate under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is authorized to operate under the general permit.

5. The general permit shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. The stationary source or emissions unit shall be subject to enforcement action under 9VAC5-80-1210 for operation without a minor NSR permit if the stationary source or emissions unit is later determined by the board not to qualify for the conditions and terms of the general permit.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; Errata, 18:20 VA.R. 3136 July 29, 2202; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1260. Actions to Change Permits.

A. The general requirements for actions to make changes to minor NSR permits are as follows:

1. Except as provided in subdivision 3 of this subsection, changes to a minor NSR permit shall be made as specified under subsections B and C of this section and 9VAC5-80-1270 through 9VAC5-80-1300.

2. Changes to a minor NSR permit may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a minor NSR permit and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a minor NSR permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit changes can be found in 9VAC5-80-1270 through 9VAC5-80-1290.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a minor NSR permit through the use of permit reopenings as specified in 9VAC5-80-1300.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1270. Administrative Permit Amendments.

A. Administrative permit amendments shall be used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9VAC5-80-1240 have been fulfilled.

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board will incorporate the changes without providing notice to the public under 9VAC5-80-1170 and designate in the permit amendment that such permit revisions have been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1280. Minor Permit Amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement.

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

3. Do not require or change a case-by-case determination of an emissions limitation or other requirement.

4. Except as provided in subdivision C 2 of this section, do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

a. An emissions cap assumed to avoid classification as a project subject to the new source review program or as a modification under § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act that would otherwise require a permit under the new source review program.

6. Are not required to be processed as a significant amendment under 9VAC5-80-1290 or as an administrative permit amendment under 9VAC5-80-1270.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require new or more frequent monitoring or reporting by the permittee or a reduction in the level of an emissions cap.

3. Designate any minor NSR permit term or condition that meets the criteria in 9VAC5-80-1120 F 1 as state-only enforceable as provided in 9VAC5-80-1120 F 2 for any minor NSR permit or any repealed or amended regulation from which this article is derived.

4. Apply any minor NSR permit term or condition that is applicable to an existing emissions unit to its replacement emissions unit that otherwise meets the requirements for exemption from the

minor new source review permit program requirements under the provisions of 9VAC5-80-1105 A 2 a.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a minor NSR permit if the board and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

1. In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated air pollutant.

2. Any emissions cap contained in the permit shall be adjusted downward appropriately so that the emissions unit's potential to emit does not reflect any compound no longer considered a regulated air pollutant.

D. A request for the use of minor permit amendment procedures shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs, accompanied by a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-1170 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed amendment.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify if the applicant has submitted a suggested proposed permit amendment pursuant to subsection D of this section. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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9VAC5-80-1290. Significant Amendment Procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1280 or as administrative amendments under 9VAC5-80-1270.

2. Significant amendment procedures shall be used for those permit amendments that meet any one of the following criteria:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emissions limitation or other requirement.

c. Seek to establish or change a minor NSR permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a project subject to the new source review program or as a modification under § 112 of the federal Clean Air Act; and

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

3. Significant amendment procedures may not be used to bypass the public participation requirements in 9VAC5-80-1170 for an application for a project that would be subject to the minor new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. At the discretion of the board, the provisions of 9VAC5-80-1170 D and E shall apply to requests made under this section if the emissions unit subject to the request under this section was subject to review in any previous permit application that was subject to 9VAC5-80-1170.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public hearing is required, processing time for a permit amendment is normally 180 days following receipt of a complete request except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25. The board may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; Clean Air Act (§§ 110, 112, 165, 173, 182 and Title V); 40 CFR Parts 51, 61, 63, 70 and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 25, Issue 06, eff. December 31, 2008; Volume 29, Issue 03, eff. November 7, 2012.

9VAC5-80-1300. Reopening for Cause.

A. A minor NSR permit may be reopened and revised under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit.

3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the requirements contained in this article.

4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a minor NSR permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

Statutory Authority

§ 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Historical Notes

Derived from Volume 18, Issue 20, eff. September 1, 2002; amended, Virginia Register Volume 29, Issue 03, eff. November 7, 2012.

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