

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION

9VAC5 CHAPTER 45
CONSUMER AND COMMERCIAL PRODUCTS

Part I
Special Provisions

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9VAC5-45-10. Applicability.

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

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

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

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

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

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

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

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

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

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

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

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

9VAC5-45-20. Compliance.

A. Unless otherwise specified in this chapter, no owner or other person shall engage in or permit any applicable operation (such as the manufacture, packaging, distribution, marketing, application, sale or use, or contracting for the application, sale or use, of any product) in violation of a standard prescribed under this chapter after the effective date of such standard.

1. Compliance with standards in this chapter, other than opacity standards, shall be determined by emission tests established by 9VAC5-45-30, unless specified otherwise in the applicable standard.

2. Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:

a. New source performance standards established pursuant to § 111 of the federal Clean Air Act.

b. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

c. Limitations and conditions that are part of an implementation plan.

d. Limitations and conditions that are part of a § 111(d) or § 111(d)/129 plan.

e. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

f. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

3. Compliance with opacity standards in this chapter shall be determined by conducting observations in accordance with Reference Method 9 or any alternative method. For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the emission test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes that contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards.

4. The opacity standards prescribed under this chapter shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard. This exception shall not apply to the following federal requirements:

a. Limitations and conditions that are part of an implementation plan.

b. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

c. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

B. No owner or other person subject to the provisions of this chapter shall fail to conduct emission tests as required under this chapter.

C. No owner or other person subject to the provisions of this chapter shall fail to install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions or process parameters or both as required under this chapter.

D. No owner or other person subject to the provisions of this chapter shall fail to

provide notifications and reports, revise reports, maintain records, or report emission test or monitoring results as required under this chapter.

E. At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any equipment associated with an operation subject to the provisions of this chapter including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the operation.

F. At all times the disposal of volatile organic compounds shall be accomplished by taking measures, to the extent practicable, consistent with air pollution control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers that are not connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

G. For the purpose of submitting compliance certifications or establishing whether or not an owner or other person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate emission or compliance test or procedure had been performed.

9VAC5-45-30. Emission testing.

A. Emission tests for operations and products subject to standards prescribed under this chapter shall be conducted and reported, and data shall be reduced as set forth in this chapter and in the appropriate reference methods unless the board (i) specifies or approves, in specific cases, the use of a reference method with minor changes in methodology; (ii) approves the use of an equivalent method; (iii) approves the use of an alternative method the results of which the board has determined to be adequate for indicating whether such operation or product is in compliance; (iv) waives the requirement for emission tests because the owner or other person has demonstrated by other means to the board's satisfaction that such operation or product is in compliance with the standard; or (v) approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. In cases where no appropriate reference method exists for an operation or product subject to an emission standard for volatile organic compounds, the applicable test method in 9VAC5-20-121 may be considered appropriate.

B. Emission testing for operations and products subject to standards prescribed under this chapter shall be subject to testing guidelines approved by the board.

Procedures may be adjusted or changed by the board to suit specific sampling conditions or needs based upon good practice, judgment, and experience. When such tests are adjusted, consideration shall be given to the effect of such change on established emission standards. Tests shall be performed under the direction of persons whose qualifications are acceptable to the board.

C. Emission tests for operations and products subject to standards prescribed under this chapter shall be conducted under conditions that the board shall specify to the owner, based on representative performance of such operation or product. The owner shall make available to the board such records as may be necessary to determine the conditions of the emission tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of an emission test unless otherwise specified in the applicable standard.

D. An owner may request that the board determine the opacity of emissions from operations or control devices that are subject to the provisions of this chapter during the emission tests required by this section.

E. Except as otherwise specified in the applicable test method or procedure, each emission test for an operation or product subject to standards prescribed under this chapter shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions acceptable to the board. For the purpose of determining compliance with an applicable standard, the arithmetic mean of the results of the three runs shall apply. In the event that a sample is accidentally lost, or if conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner's control, compliance may, upon the approval of the board, be determined using the arithmetic mean of the results of the two other runs.

F. The board may test emissions of volatile organic compounds from any operation or product subject to standards prescribed under this chapter. Upon request of the board the owner shall provide, or cause to be provided, emission testing facilities as follows:

1. Sampling ports adequate for test methods applicable to such source. This includes (i) constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures and (ii) providing a stack or duct with acceptable flow characteristics during emission tests, as demonstrated by applicable test methods and procedures.

2. Safe sampling platforms.

3. Safe access to sampling platforms.

4. Utilities for sampling and testing equipment.

5. Test enclosures for determining capture efficiency.

G. The board may, at its discretion, accept other demonstrations of compliance in lieu of emission testing, such as the results of manufacturer emission testing of a product batch or manufacturer product batch formulation records.

H. Upon request of the board, any owner or other person causing or permitting any operation subject to the provisions of this chapter shall conduct emission tests in accordance with procedures approved by the board.

9VAC5-45-40. Monitoring.

A. Unless otherwise approved by the board, owners or other persons subject the provisions of an standard under this chapter shall install, calibrate, maintain, and operate systems for continuously monitoring and recording emissions of specified pollutants as specified in the applicable article of this chapter. However, nothing in this chapter shall exempt any owner from complying with subsection F of this section.

B. All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting emission tests required under 9VAC5-45-30. Verification of operational status shall, as a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device and completion of any conditioning period specified by the appropriate specification in Appendix B of 40 CFR Part 60.

C. During any emissions tests required under 9VAC5-45-30 or within 30 days thereafter and at such other times as may be requested by the board, the owner or other person subject to the requirements of subsection A of this section shall conduct continuous monitoring system performance evaluations and furnish the board within 60 days of them two or, upon request, more copies of a written report of the results of such tests. These continuous monitoring system performance evaluations shall be conducted in accordance with the requirements and procedures specified in the applicable emission standard, the requirements contained in applicable procedures in 9VAC5-20-121, and the requirements and procedures equivalent to those contained in the appropriate specification of Appendix B of 40 CFR Part 60.

D. Unless otherwise approved by the board, all continuous monitoring systems required by subsection A of this section shall be installed, calibrated, maintained, and operated in accordance with (i) applicable requirements in this section, (ii) requirements in the applicable emission standard, and (iii) requirements equivalent to those in 40 CFR 60.13.

E. After receipt and consideration of written application, the board may approve alternatives to any monitoring procedures or requirements of this chapter including, but

not limited to, the following:

1. Alternative monitoring requirements when installation of a continuous monitoring system or monitoring device specified by this chapter would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases.

2. Alternative monitoring requirements when the source is infrequently operated.

3. Alternative monitoring requirements to accommodate continuous monitoring systems that require additional measurements to correct for stack moisture conditions.

4. Alternative locations for installing continuous monitoring systems or monitoring devices when the owner can demonstrate the installation at alternate locations will enable accurate and representative measurements.

5. Alternative methods of converting pollutant concentration measurements to units of the standards.

6. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).

7. Alternative monitoring requirements when the effluent from a single source or the combined effluent from two or more sources are released to the atmosphere through more than one point.

8. Alternative procedures for performing calibration checks.

9. Alternative monitoring requirements when the requirements of this section would impose an extreme economic burden on the owner.

10. Alternative monitoring requirements when the continuous monitoring systems cannot be installed due to physical limitations at the source.

F. Upon request of the board, the owner or other person subject to the provisions of this chapter shall install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions or process parameters or both in accordance with methods and procedures acceptable to the board.

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

A. Any owner or other person subject to the continuous monitoring provisions of

9VAC5-45-40 C shall provide written notifications to the board of the following:

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

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

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

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

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

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

2. The process operating time during the reporting period.

3. Specific identification of each period of excess emissions that occurs during startups, shutdowns and malfunctions of the source.

4. The nature and cause of any malfunction (if known), the corrective action taken or preventative measures adopted.

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

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

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

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

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

G. Unless otherwise specified by the provisions of an article under this chapter, all records required to determine compliance with the provisions of an article under this chapter shall be maintained by the owner or other person subject to such provision for two years from the date such record is created and shall be made available to the board upon request.

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

I. Information submitted to the board to meet the requirements of this chapter shall be available to the public except where the owner makes a showing satisfactory to the board under 9VAC5-170-60 B that the information meets the criteria in 9VAC5-170-

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

HISTORICAL NOTES:

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