



Economic Impact Analysis Virginia Department of Planning and Budget

9 VAC 5-130– Regulation for Open Burning
Department of Environmental Quality
February 28, 2013

Summary of the Proposed Amendments to Regulation

The Air Pollution Control Board (Board) proposes to: 1) limit the requirements of this regulation to only VOC emissions control areas, 2) delete the reference to “urban areas” from the permissible burning provisions for VOC emissions control areas, 3) add special provisions to address the specific burning needs of VDOT, 4) add clarifying language, and 5) eliminate obsolete language.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

Background

The Regulation for Open Burning is part of the Commonwealth’s effort to meet the primary goals of the federal Clean Air Act: the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS. The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air in order to protect public health and safety. EPA requires that each state submit a State Implementation Plan (SIP), including any laws and regulations necessary to enforce the plan, which shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

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

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

Once a nonattainment area is defined, each state is then obligated to submit a SIP demonstrating how it will attain the air quality standards in each nonattainment area. Certain specific control measures and other requirements must be adopted and included in the SIP. In cases where the specific federal control measures are inadequate to achieve the emission reductions or attain the air quality standard, the state is obligated to adopt additional control measures as necessary to achieve this end. The open burning rule is needed to reduce VOC emissions in Virginia's ozone nonattainment areas to facilitate the attainment and maintenance of the air quality standards.

The current regulation provides for the control of open burning and use of special incineration devices. It specifies the materials that may and may not be burned, the conditions under which burning may occur, and the legal responsibilities of the person conducting the burning. The regulation permits open burning or the use of special incineration devices for disposal of clean burning construction waste, debris waste and demolition waste but provides for a restriction during ozone season (May through September) in the VOC emissions control areas,

which generally correspond to nonattainment areas, as well as maintenance and Early Action Compact areas that require additional controls to avoid a nonattainment designation. Open burning is limited to clean burning waste and debris waste; certain materials may never be burned anywhere at any time. Finally, the regulation provides a model ordinance for localities that wish to adopt their own legally enforceable mechanisms to control burning. Numerous localities have opted to adopt open burning ordinances in practice.

Limiting application of regulation

The Board proposes to limit the application of this regulation to only VOC emissions control areas. Other localities would still be able to adopt and implement local burning ordinances in accordance with state law should local conditions and needs warrant, and the model ordinance contained within the state rule would be retained. Note that although not every locality in Virginia has an open burning ordinance or provides curbside waste pickup, virtually all localities have some form of fire protection and nuisance codes that can be used to directly address local open burning problems.

According to the Department of Environmental Quality (Department), currently approximately 840 hours per year are spent by the agency on open burning compliance activities. The Department estimates that the proposal to limit the application of this regulation to only VOC emissions control areas will reduce the required staff time to address open burning issues by about 75 percent, consequently saving about 630 hours. The Department believes that this time can be more productively spent on air quality issues with a more serious impact on health and safety.

Urban areas

The current regulation allows open burning in "urban areas" for the on-site destruction of leaves and tree, yard and garden trimmings located on private property if no regularly scheduled public or private collection service is available. In "non-urban" areas, such open burning is permitted regardless of the availability of collection service.

The concept of "urban areas" was adopted by the board in the early 1980s in order to balance the need for waste disposal in areas without access to public services such as refuse collection against the health and safety needs those persons likely to be affected. Since

population characteristics are not necessarily indicative of an air pollution problem, the criteria for burning limitations is not sensibly based on a list of "urban areas," but simply as to whether or not waste collection service is available. Thus the Board proposes to delete the reference to "urban areas" from the permissible burning provisions for VOC emissions control areas.

On-site

The term "on-site" was originally added in order to limit open burning where the waste material was generated to minimize problems associated with the transport and storage of solid waste. However, the Virginia Department of Transportation (VDOT) cannot burn highway maintenance debris "on-site" and therefore the Board proposes to add special provisions to address the specific burning needs of VDOT. For all other situations, the "on-site" requirements remain.

The special provisions for VDOT are consistent with a Memorandum of Understanding that is currently in effect between DEQ and VDOT. Thus this proposed change will not have a significant impact in practice.

Businesses and Entities Affected

Open burning may be conducted by a wide range of businesses, agencies, and individual citizens. However, none of the contemplated changes to the regulation will have any direct impact on how open burning is conducted; rather, the regulatory amendments will clarify how open burning concerns are to be addressed: at the local or state level.

Localities Particularly Affected

The proposed amendments particularly affect localities which are not in VOC control areas, and do not currently have local open burning ordinances. The following counties fall into this category: Allegheny, Amelia, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Brunswick, Buchanan, Buckingham, Carroll, Charlotte, Clarke, Craig, Cumberland, Dickenson, Dinwiddie, Essex, Floyd, Fluvanna, Franklin, Giles, Goochland, Grayson, Greene, Greensville, Highland, King and Queen, King William, Lancaster, Lee, Louisa, Madison, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Northumberland, Nottoway, Orange, Page, Patrick, Powhatan, Prince Edward, Pulaski, Rappahannock, Richmond, Rockbridge, Rockingham, Russell, Scott, Southampton, Sussex, Westmoreland, and Wythe. The

following cities fall into this category: Bedford, Buena Vista, Clifton Forge, Covington, Emporia, Galax, Lexington, and Norton.

Projected Impact on Employment

The proposed amendments will not significantly affect employment.

Effects on the Use and Value of Private Property

The proposed amendments will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects

The proposed amendments will not increase costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs

The proposed amendments will not significantly affect real estate development costs.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, Section 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small

businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.