

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

**PRELIMINARY DETERMINATION REVIEW DOCUMENT FOR
PROPOSED REGULATION REVISION F97
CONCERNING**

**PETROLEUM LIQUID STORAGE AND TRANSFER OPERATIONS
(9 VAC 5 CHAPTER 40)**

PROVISIONS AFFECTED (TENTATIVE DETERMINATION)

Emission Standards for Petroleum Liquid Storage and Transfer Operations, Article 37 (Rule 4-37)

REASON FOR PROPOSED REGULATION

The regulation amendments are being proposed to remove requirements that exceed federal mandates as identified pursuant to the review of existing regulations mandated by Executive Order 15(94).

STATEMENT OF LEGAL AUTHORITY

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

STATEMENT OF STATUTORY MANDATES

The regulation is mandated by federal law or regulation. A succinct statement of the source (including legal citation) and scope of the mandate may be found below. A copy of all cited legal provisions is attached.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

(7) make emissions data available to the public as reported and as correlated with any applicable

emission standards or limitations.

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

- (1) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and
- (2) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

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

Part D of the Clean Air Act specifies state implementation plan requirements for nonattainment areas, with Subpart 1 covering nonattainment areas in general and Subpart 2 covering additional provisions for ozone nonattainment areas.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification."

Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

- (1) the implementation of all reasonably available control measures as expeditiously as practicable and shall provide for the attainment of the national ambient air quality standards;
- (2) the requirement of reasonable further progress;
- (3) a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;
- (4) an identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;
- (5) the requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;
- (6) the inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;
- (7) if applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and
- (8) the inclusion of specific contingency measures to be undertaken if the nonattainment area fails to

make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements shall provide for controls which are not less stringent than the controls applicable to these same areas before such relaxation.

Under Part D, Subpart 2, § 182(a)(2)(A) requires that the existing regulatory program requiring reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOCs) in marginal nonattainment areas be corrected by May 15, 1991, to meet the minimum requirements in existence prior to the enactment of the 1990 amendments. RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. EPA has published control technology guidelines (CTGs) for various types of sources, thereby defining the minimum acceptable control measure or RACT for a particular source type.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. The additional, more comprehensive control measures in § 182(b)(2)(A) require that each category of VOC sources employ RACT if the source is covered by a CTG document issued between enactment of the 1990 amendments and the attainment date for the nonattainment area. Section 182(b)(2)(B) requires that existing stationary sources emitting VOCs for which a CTG existed prior to adoption of the 1990 amendments also employ RACT.

Section 182(c) requires stationary sources in serious nonattainment areas to comply with the requirements for sources in both marginal and moderate nonattainment areas.

EPA has issued detailed guidance that sets out its preliminary views on the implementation of the air quality planning requirements applicable to nonattainment areas. This guidance is titled the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (or "General Preamble"). See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The General Preamble has been supplemented with further guidance on Title I requirements. See 57 FR 31477 (July 16, 1992) (announcing the availability of draft guidance for lead nonattainment areas and serious PM₁₀ nonattainment areas); 57 FR 55621 (Nov. 25, 1992) (guidance on NO_x RACT requirements in ozone nonattainment areas). For this subject, the guidance provides little more than a summary and reiteration of the provisions of the Act.

STATEMENT OF CONCLUSIONS

The contemplated regulation is essential (i) to protect the health, safety or welfare of citizens or (ii) for the efficient and economical performance of an important governmental function. The reasoning for this conclusion is set forth below.

The agency performed an analysis to determine if statutory mandates justify continuation of the regulation. The analysis revealed that statutory justification does exist for the regulation. The regulation was adopted in order to implement the policy set forth in the Virginia Air Pollution Control Law and to fulfill the Commonwealth's responsibilities under the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the

control of criteria pollutants. These statutes still remain in force with the provisions that initiated adoption of the regulation still intact.

Analysis reveals that the regulation is consistent with applicable state and federal regulations, statutory provisions, and judicial decisions. Factors and circumstances (federal statutes, original intent, state air quality program, and air pollution control methodology and technology) which justified the original issuance of the regulation have not changed to a degree that would justify a change to the basic requirements of the regulation.

Federal guidance on states' approaches to air pollution control has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. The 1977 amendments to the Clean Air Act authorized the establishment of nonattainment areas and prescribed specific requirements for those areas. These amendments also required EPA to promulgate minimum RACT requirements for sources of volatile organic compounds. These requirements are summarized in Appendix D to EPA's proposed policy statement. See 52 FR 45105 (November 24, 1987). The 1990 amendments to the Clean Air Act required states to adopt regulations incorporating EPA's minimum RACT requirements for sources of volatile organic compounds. Therefore, the legally binding federal mandate for this regulation derives from the minimum RACT requirements published pursuant to the 1977 amendments combined with the directive in the 1990 amendments for states to adopt regulations which include these minimum RACT requirements in order to control volatile organic compounds, which are emitted by the sources subject to this regulation.

There is, however, one provision of the regulation that exceeds the specific minimum requirements of a legally binding state or federal mandate.

9 VAC 5-40-5200 B specifies the applicability of the regulation to sources outside the volatile organic compound emissions control areas according to a phased schedule set forth in 9 VAC 5-40-5200 B 1, 2, and 3. This requirement exceeds the federal mandate, which requires only sources inside, not outside, the volatile organic compound emissions control areas to comply with the standards. When the regulation was adopted, Virginia's State Air Pollution Control Board chose to extend the applicability of the regulation to the entire state.

The specified provision of the regulation is not essential to protect the health, safety or welfare of the citizens of the Commonwealth because recent Regional Oxidant Modeling (ROM) has shown that controlling volatile organic compound emissions outside nonattainment areas does not contribute significantly to attainment within those areas. Therefore, the extension of the regulation's applicability to the entire state does not accomplish any more than limiting the applicability to the volatile organic compound emissions control areas.

STATEMENT OF PROCESS FOR CONSIDERING ALTERNATIVES

Alternatives to the proposed regulation amendments are being considered by the Department. The Department has tentatively determined that the third alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation amendments. The alternatives being considered by the Department are discussed below.

1. Take no action to amend the regulation. This option is not being selected because of the reason specified below in 3.

2. Make alternative regulatory changes to those that are required by the provisions of the legally binding state or federal mandates. This option is not being selected because such changes are not warranted.
3. Amend the regulation to satisfy the provisions of the legally binding state or federal mandates. This option is being selected because such changes are necessary as the current regulation needlessly exceeds the federal mandate.

As provided in the public participation procedures of the State Air Pollution Control Board, the Department will include, in the subsequent Notice of Intended Regulatory Action, a description of the above alternatives and a request for comments on other alternatives and the costs and benefits of the above alternatives or the other alternatives that the commenters may provide.

STATEMENT OF IMPACT ON FAMILY FORMATION, STABILITY AND AUTONOMY

In the formulation of these regulation amendments, the Department will consider the impact of the regulation amendments on family formation, stability and autonomy. It is not anticipated that these regulation amendments will have a direct impact on families. However, there may be positive indirect impacts in that the regulation amendments will contribute to the prevention of air pollution, thus also contributing to reductions in associated fertility disorders, fetal mutation and deformity, disease, and premature death.

CONTACT PERSON

Questions on the proposal should be referred to:

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