



Periodic Review / Retain Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Part I of 9VAC5-80 (Permits for Stationary Sources), 9VAC5-80-5 et seq. (Permit Actions Before the Board)
Regulation title	Regulations for the Control and Abatement of Air Pollution
Document preparation date	August 27, 2014

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 17 (2014) and 58 (1999).

Legal basis

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

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

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

§ 165 of the Clean Air Act requires preconstruction review and permitting of major emitting facilities to prevent significant deterioration of the ambient air quality. Public hearings are required as part of the permit approval process.

§§ 173 and 182 of the Clean Air Act require states to develop, submit and implement plans to limit emissions in areas designated as nonattainment for national ambient air quality standards so that attainment is achieved according to a schedule determined by the Act. Plans must include preconstruction review and permitting of new and modified major stationary sources, emission standards that meet the lowest achievable emission rates in practice for the particular source category, preconstruction offsets, reasonably available control technology for existing sources in certain areas,

contingency measures, and special emission reduction programs as necessary to achieve and maintain reasonable further progress toward attainment.

Title 5 (§ 501 et seq.) of the Clean Air Act requires states to develop and submit for EPA approval, a permit program containing specified elements, permit requirements, and permit conditions to control emissions of regulated air pollutants from Title IV affected sources, major sources, sources subject to standards under §§ 111 or 112 of the Clean Air Act, or sources required to have a permit under parts C or D of Title I of the Clean Air Act. The program must include procedures for public notice, including offering an opportunity for public comment and a public hearing.

40 CFR Part 51 sets out 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 F (Procedural Requirements) defines terms, requires public notice of comment periods and public hearings, and specifies requirements for plan submissions, revisions, and approvals.

Section 51.102 under subpart F specifies that states must provide to the public notice, an opportunity for public comment, and either a public hearing or the opportunity to request a public hearing prior to the adoption of such plans, revisions to the plans, or compliance schedules by which sources are required to be in compliance with such plans.

Subpart I (Review of New Sources and Modifications) requires plans to provide legally enforceable procedures, requirements for public availability of information, definitions and permit requirements, emission limitations, public participation requirements, and specific requirements for Prevention of Significant Deterioration (PSD) permits.

Section 51.161 under subpart I specifies that plans must include procedures for ensuring the public availability of information submitted by source owners and operators, the agency's analysis of the impact of the new or modified source construction or modification on ambient air quality, and the agency's proposal for approval or disapproval of the permit.

Section 51.166 under subpart I specifies that plans must contain emission limitations sufficient to prevent significant deterioration of air quality and requires that action under this paragraph be subject to the opportunity for a public hearing.

40 CFR Part 70 provides for the establishment of comprehensive state Title V air quality permitting systems, and defines minimum elements that the permit programs shall contain. Other than requiring that all sources subject to the regulation have a permit that assures compliance with all applicable standards and requirements and requiring the collection of fees to support the program, the program does not impose substantive new requirements.

Section 70.7 under Part 70 requires that all permit proceedings except for minor permit modifications shall have procedures for public notice including an opportunity for public comment and a public hearing.

40 CFR Part 72 provides for the establishment of an operating permit program for affected sources pursuant to the acid rain provisions of Title IV of the federal Clean Air Act. The requirements of this part supplement and modify the requirements of 40 CFR Part 70 as they apply to affected sources under the Acid Rain Program.

Subpart G (Acid Rain Phase II Implementation) sets forth the criteria with which the acid rain operating permit program must comply to issue Phase II Acid Rain permits consistent with the provisions of part 70 (Title 5) permit program.

Section 72.72 under subpart G requires that notice of the issuance of a draft Acid Rain permit be provided to the public including the opportunity for public comment and opportunity to request a public hearing.

State Requirements

Code of Virginia § 10.1-1300 defines pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Excess emissions from permitted sources are harmful to human health and can significantly interfere with the people's enjoyment of life and property.

Code of Virginia § 10.1-1307 A provides that the board may, among other activities, develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth.

Code of Virginia § 10.1-1308 provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act.

Code of Virginia § 10.1-1322 A provides the department with the authority to issue, amend, revoke or terminate permits to control air pollutant emissions pursuant to regulations adopted by the board.

Code of Virginia § 10.1-1322.01 provides procedures for public hearings and requests for public hearings concerning proposed permit actions before the board. It provides that the board take final action on permits brought before the board and allows for additional opportunity for public comment and board review of permitting actions.

Alternatives

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

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

1. Retain the regulation without amendment. This option is being selected because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.
2. Make alternative regulatory changes to those required by the provisions of the legally binding state and federal mandates, and associated regulations and policies. This option was not selected because it could result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to public health and welfare.
3. Repeal the regulation or amend it to satisfy the provisions of legally binding state and federal mandates. This option was not selected because the regulation is effective in meeting its goals and already satisfies those mandates.

Public comment

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

A Notice of Periodic Review concerning this regulation was published in the Virginia Register of Regulations on June 30, 2014. The public comment period closed on July 21, 2014. No comment was received on this regulation.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

This regulation enhances the Department's ability to ensure compliance with all applicable federal requirements under the Clean Air Act and specific requirements under the state code through the issuance and enforcement of permits to construct and operate a new or modified facility and issuance and enforcement of federal and state operating permits.

The regulatory requirements for public notice of an opportunity to comment and opportunity to request a public hearing effectively ensure that the Department identifies and clarifies exactly which air quality program requirements are applicable to sources subject to permit requirements and, through the issuance and enforcement of new source review permits, allows the construction and operation of only those new or modified facilities that will be designed, built, and operated without causing or exacerbating a violation of any ambient air quality standard or interfering with the attainment or maintenance of any ambient air quality standards. Public oversight ensures that the permits will adequately:

1. Apply source-specific regulatory requirements with the flexibility to address the individual needs of sources;
2. Ensure that there is no significant deterioration of air quality throughout the Commonwealth;
3. Ensure that emission increases from new major facilities or major expansions located in nonattainment areas are offset by emission reductions from existing facilities by an equal or greater amount;
4. Apply case-by-case control technology determinations and other source-specific requirements; and
5. Apply maximum achievable control technology to limit emissions of hazardous air pollutants.

In the air permit program, a public hearing is required by either a federal or state regulation for all major and certain minor new source review permits. On the other hand, operating permits have no mandate for a public hearing; however there is a mandate to provide an opportunity to request a public hearing. By meeting federal requirements for public participation in permitting actions, this regulation provides a

mechanism for the Commonwealth to administer air quality control program requirements without the need for direct federal oversight.

The regulation effectively meets the requirements of § 10.1-1322.01 of the Code of Virginia by addressing three situations: (i) where there is only a public comment period required prior to the permit decision, (ii) where there is a federal or state mandate to hold a hearing prior to a permitting decision, and (iii) where there is a public interest in having the board directly consider the issues involved in the permitting decision and make the final determination. These procedures ensure that the public participation process is effectively implemented for all permit actions, since it is necessary for the protection of public health and welfare.

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. The public review procedures are intended to provide adequate public oversight of the permitting process to ensure that owners comply with air pollution emission limits and control technology requirements in order to control levels of emissions being emitted into the ambient air, and prohibit emissions that would endanger health, contribute to nonattainment of the national air quality standards, or interfere with the maintenance of those standards.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

This regulation satisfies the provisions of the law and legally binding state and federal requirements, and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last updated in 2009. This regulation continues to contribute to the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions through public discussion and direct review of permitting actions by the board.

The Department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Family impact

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

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

TEMPLATES\ EXISTING-REVIEW\TH07
REG\ERR\ERR 2014\80-07TH