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Exempt Action: Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary Action: Articles 6, 7, 8 and 9 of 9VAC5-80 Secondary Action: Part VI of 9VAC5-170
VAC Chapter title(s)	Part II of 9VAC5-80, Permits for Stationary Sources; Part VI of 9VAC5-170, Regulation for General Administration
Action title	Permits and Variances for Stationary Sources, Localities Particularly Affected (Revision E20)
Final agency action date	September 17, 2020

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Chapter 1110 of the 2020 Acts of Assembly amended § 10.1-1307.01 to add new public participation requirements for permits and variances for certain facility types with the potential to have an impact on a particular locality. A "locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The mandate for this regulatory change is a directive from the General Assembly: Chapter 1110 of the 2020 Acts of Assembly, modifying § 10.1-1307.01 of the Virginia Air Pollution Control Law.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On September 17, 2020, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, Articles 6, 7, 8 and 9 of 9VAC5-80. Part VI of the Regulation for General Administration (9VAC5-170) was also amended. The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act because they are necessary to conform to Virginia statutory law.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Legal Basis

Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory 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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Promulgating Entity

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

State Requirements

Chapter 1110 of the 2020 Acts of Assembly, modifying § 10.1-1307.01 of the Virginia Air Pollution Control Law.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The purpose of the regulations is to protect the public's health or welfare by requiring sources of air pollution to obtain a permit or variance that meets federal and state standards for the control of air

pollution with additional notice to and time for input from the public. The proposed amendments are being made to conform to new public participation procedures for permits and variances for certain types of stationary sources as mandated by Chapter 1110 of the 2020 Acts of Assembly.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The board will determine if a locality will be particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas. The applicant must publish a notice at least 60 days prior to the close of the public comment period. The applicant must mail the notice to local elected officials and the planning district commission; local public libraries and schools, and local property owners. Written comments must be accepted by the board for at least 30 days after the public hearing.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

1. Public: The primary advantage to the general public is that a community that may experience additional impacts from certain projects will have additional notice and opportunity to comment on such projects. There may be a disadvantage to the regulated entities that must undergo the expense of additional public notice.

2. Department: The primary advantage to the department is that additional impacts on a specific community may be identified and resolved. There are no disadvantages to the department as a result of the regulatory change.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

No other state agencies will be affected by this regulatory action.

Localities Particularly Affected:

Any locality that may experience a particular impact from a specific project is the specific target of this regulatory action.

Other Entities Particularly Affected:

The other entities particularly affected have been identified by the General Assembly as (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-1110 C		General definitions.	Definition of "locality particularly affected" added. Needed in order to implement the requirement of state law to address public participation for such localities in greater detail, and to be consistent with other new source review regulations.
9VAC5-80-1170*	Subsection I	Public participation requirements.	Add additional public notice and participation requirements for specific source types. Needed in order to implement the requirement of state law to address public participation for such localities in greater detail.
9VAC5-80-1410		General definitions.	Definition of "locality particularly affected" added. Needed in order to implement the requirement of state law to address public participation for such localities in greater detail, and to be consistent with other new source review regulations.
9VAC5-80-1460*	Subsection K	Public participation requirements.	Add additional public notice and participation requirements for specific source types. Needed in order to implement the requirement of state law to address public participation for such localities in greater detail.
9VAC5-80-1775*	Subsection K	Public participation requirements.	Add additional public notice and participation requirements for specific source types. Needed in order to implement the requirement of state law to address public participation for such localities in greater detail.
9VAC5-80-2070*	Subsection K	Public participation requirements.	Add additional public notice and participation requirements for specific source types. Needed in order to implement the requirement of state law to address public participation for such localities in greater detail.
9VAC5-170-140*	Subsection D	Public participation requirements.	Add additional public notice and participation requirements for specific source types. Needed in order to implement the requirement of state law to address public participation for such localities in greater detail.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting

requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

This regulation meets the requirements of state law. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum requirements of state law. Any such changes would compromise the effectiveness of the regulation in protecting the health and welfare of the public.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No family impacts are anticipated.

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