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Fast-Track Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC5-40 (Existing Stationary Sources)
VAC Chapter title(s)	Regulations for the Control and Abatement of Air Pollution
Action title	Existing Stationary Sources (Rev. B23)
Date this document prepared	January 29, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

In accordance with the Office of Regulatory Management Procedures for Review of State Regulations, state agencies are required to review regulations periodically in order to determine whether they are still needed. As a result of a review of 9VAC5-40 (Existing Stationary Sources), it has been determined that the following regulations may be repealed:

[Article 11](#), Emission Standards for Petroleum Refinery Operations

[Article 26](#), Emission Standards for Large Appliance Coating Application Systems

According to DEQ's CEDS database, there are no longer any affected facilities located within the state that are subject to these regulations, and there is therefore no more need for these regulations.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CEDS - Comprehensive Environmental Data System
DEQ – Department of Environmental Quality
EPA - Environmental Protection Agency
NAAQS - National Ambient Air Quality Standard
ppmv - parts per million by volume

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 13, 2023, the State Air Pollution Control Board:

1. Authorized the department to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized the department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

The primary impetus for this regulatory change is the Office of Regulatory Management Procedures for Review of State Regulations, which implements Executive Order 19, Development and Review of State Regulations. All existing state regulations promulgated by executive branch agencies must be reviewed every four years to determine whether they should be continued without change or be amended or repealed. A periodic review was conducted accordingly for 9VAC5-40, Existing Stationary Sources, from June 6 through June 27, 2022.

In order to determine the ongoing applicability of the regulations, a review of the Comprehensive Environmental Data System (CEDS) was made. CEDS is Virginia's air regulatory registration database. Facilities must register in this database all units to which a regulation of the board applies. This review revealed that two facility types covered by a Chapter 40 regulation no longer operate in the state: petroleum refinery operations and large appliance coating application systems. Therefore, Article 11,

Emission Standards for Petroleum Refinery Operations, and Article 26, Emission Standards for Large Appliance Coating Application Systems, should be repealed.

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking because it repeals regulations for facilities that no longer exist.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency'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 amendment is available upon request.

Promulgating Entity

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

Federal Requirements

Section 109 (a) of the federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) for criteria pollutants to protect public health. Section 110 mandates that each state adopt and submit to EPA a state implementation plan (SIP) which provides for the implementation, maintenance, and enforcement of the NAAQS.

Article 11 of 9VAC5-40 was originally promulgated in 1972 in order to control emissions of several criteria pollutants (particulate matter, sulfur dioxide, and volatile organic compounds) as well as hydrogen sulfide, from petroleum refineries. Article 26 was also originally promulgated in 1972 in order to control emissions of volatile organic compounds, a criteria pollutant, from large appliance coating application systems. These regulations were adopted by EPA as revisions to the Virginia SIP, and are thus federally enforceable.

State Requirements

These regulations and their repeal are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A). The law defines such air 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 or life or property" (§ 10.1-1300).

The original Clean Air Act (1970) was relatively broad in how it expected states to meet the NAAQS and develop SIPs. At the time the early Chapter 40 rules were adopted, including Articles 11 and 26, Virginia had broad latitude in choosing what facility types would be covered by the regulations of the Board. Since then, EPA's regulations that implement the Clean Air Act have become considerably more proscriptive and detailed. While many of the legacy 9VAC5-40 regulations still apply to affected facilities and continue to be an important underpinning to the SIP, Articles 11 and 26 no longer serve any useful purpose.

A number of general provisions and state-specific requirements are cross-referenced in each rule, but these were originally intended for the convenience of the affected facilities, and not individual state requirements in and of themselves.

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 is intended to solve.

Given that there are no longer any facilities subject to the two subject regulations, there is no longer a need for them to remain on the books. Removing outdated regulations is important in order to maintain clarity and effectiveness of the regulations overall. This benefits public welfare in general in that it will contribute to a more efficient and effective functioning of government.

Even if there were still affected sources in the state, EPA's regulations have become much more protective of public health and welfare since state regulations were originally promulgated in 1972. For example, Article 11 limits sulfur dioxide emissions to an in-stack concentration of 2,000 parts per million by volume (ppmv). The currently effective federal standard limits sulfur dioxide emissions to 50 ppmv (7-day rolling average) and 25 ppmv (365-day rolling average).

Any new petroleum refining or large appliance coating facilities locating in Virginia will now be subject to federal New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants for Source Categories, and a suite of other permitting requirements implemented since 1972.

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 regulations are no longer needed, and are therefore repealed in their entirety.

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: There are no direct impacts on public health as there are no longer any petroleum refineries or large appliance coating application systems emitting pollutants in the Commonwealth. There is a general advantage to the overall welfare of the public in that removing outdated regulations maintains clarity and effectiveness of the regulations overall, which in turn contributes to the efficient and effective functioning of government. There are no disadvantages to the public.

2. Department: The repeals will allow the department to focus pollution reduction strategies on facilities that have a negative impact on human health and the environment. This is an advantage. There are no disadvantages to the agency or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The proposed regulation amendment is not more restrictive than the applicable legal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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

There is no state agency which will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other state agencies.

Localities Particularly Affected

There is no locality which will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other localities.

Other Entities Particularly Affected

There is no entity which will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other entities.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail;</p>	<p>The regulatory change will not result in any cost to the department.</p>
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b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	The regulatory change will not result in any cost to any state agency.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	Repeal of these regulations will allow the department to focus pollution reduction strategies and resources on facilities that have a negative impact on human health and the environment. Improved clarity of the regulations overall is an ongoing agency obligation.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	No impacts to any locality are anticipated.
Benefits the regulatory change is designed to produce.	The general public welfare will likely benefit because the repeal of unnecessary regulations results in the efficient and effective functioning of government. The removal of unnecessary regulatory language will contribute to the clarity of the regulations overall.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	No individuals, businesses, or other entities will be affected by the regulatory change.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are no longer any petroleum refineries or large appliance coating application systems in the state.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;	No projected costs for any individuals, businesses, or other entities will result from the regulatory change.

b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	The repeal of unnecessary regulations promotes the efficient and effective functioning of government.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

Alternatives to the proposed regulation amendments were considered by the Board. The Board determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the Board, along with the reasoning by which the board has rejected any of the alternatives being considered, are discussed below.

1. Repeal the regulations. This option was chosen because it meets the stated purpose of the regulation: to promote public welfare by eliminating unnecessary regulatory requirements.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because it would not meet the stated purpose of the regulation.
3. Take no action to amend the regulation and continue to use an outdated definition. This option was not chosen because it would not meet stated purpose of the regulation.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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.

Repeal of regulations that are no longer needed will have no impact on small businesses other than making the regulations of the Board generally easier to manage and follow.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal, the impacts on the regulated community, and impacts of the regulation on farm or forest land preservation. Also, the Board is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the proposal on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the proposal.

The Board also seeks comments on whether or not there may be any impacts to the Virginia SIP as a result of this action.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Karen G. Sabasteanski, Policy Analyst, Air and Renewable Energy Division, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email karen.sabasteanski@deq.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
Article 11, Emission Standards for Petroleum Refinery Operations			
9VAC5-40-1340		Applicability and designation of affected facility	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1350		Definitions	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1360		Standard for particulate matter	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1370		Standard for sulfur dioxide	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1380		Standard for hydrogen sulfide	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1390		Standard for volatile organic compounds	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1400		Control technology guidelines	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1410		Standard for visible emissions	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1420		Standard for fugitive dust/emissions	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1430		Standard for odor	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.

9VAC5-40-1440		Standard for toxic pollutants	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1450		Compliance	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1460		Test methods and procedures	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1470		Monitoring	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1480		Notification, records and reporting	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1490		Registration	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1500		Facility and control equipment maintenance or malfunction	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-1510		Permits	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
Article 26. Emission Standards for Large Appliance Coating Application Systems			
9VAC5-40-3560		Applicability and designation of affected facility	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3570		Definitions	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3580		Standard for volatile organic compounds	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to

			promote clarity and the efficient operation of government.
9VAC5-40-3590		Control technology guidelines	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3600		Standard for visible emissions	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3610		Standard for fugitive dust/emissions	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3620		Standard for odor	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3630		Standard for toxic pollutants	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3640		Compliance	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3650		Test methods and procedures	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3660		Monitoring	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
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9VAC5-40-3680		Registration	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.
9VAC5-40-3690		Facility and control equipment maintenance or malfunction	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to

			promote clarity and the efficient operation of government.
9VAC5-40-3700		Permits	Repealed because there are no longer any affected facilities in the state that are subject to this regulation. Needed to promote clarity and the efficient operation of government.