



Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary: 9VAC5-45 Secondary: Article 48, 9VAC5-40
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Consumer and Commercial Products (Rev. J07)
Date this document prepared	September 10, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

A new chapter (9VAC5-45, Consumer and Commercial Products) was originally proposed as part of this regulatory action, consisting of general requirements and seven articles to control volatile organic compound (VOC) emissions from several types of consumer and commercial products in the Northern Virginia, Fredericksburg and Richmond VOC Emissions Control Areas. By separate action, the new chapter has already become an effective regulation, but it is applicable only in the Northern Virginia and Fredericksburg VOC Emission Control areas. As previously proposed, this regulatory action is revised to include only those provisions that represent changes to the new effective regulation.

The new Chapter 45 is amended to apply the provisions of four of the original articles in the Richmond VOC Emissions Control Area; specifically, provisions pertaining to portable fuel containers manufactured on or after August 1, 2010, consumer and commercial products manufactured on or after August 1, 2010, architectural and industrial maintenance coatings, and adhesives, adhesive primers, sealants and sealant primers. Additionally, Chapter 40, Article 48 is amended to apply provisions pertaining to mobile equipment repair and refinishing operations in the Richmond VOC Emissions Control Area.

Compliance dates for standards applicable in the Richmond VOC Emissions Control Area have been changed to a more reasonable date in the future. The compliance dates for a proposed phase-in of standards applicable to the use of single-ply roof membrane adhesives and sealants has been modified

to include a separate compliance date for the phase-in in the Richmond VOC Emissions Control Area. A temporary exemption for the manufacture and distribution of single-ply roof membrane adhesives and sealants, which did not appear in the original proposal but which already appears in the effective regulatory language, has been preserved.

Statement of final agency action

Please 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 or board taking the action, and (3) the title of the regulation.

On September 10, 2010, 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, (i) Emission Standards for Mobile Equipment Repair and Refinishing Operations (9VAC5-40, Article 48), (ii) Emission Standards for Portable Fuel Containers and Spouts Manufactured on or after August 1, 2010 (9VAC5-45, Article 2), (iii) Emission Standards for Consumer Products Manufactured on or after August 1, 2010 (9VAC5-45, Article 4), (iv) Emission Standards for Architectural and Industrial Maintenance Coatings (9VAC5-45, Article 5), and (v) Emission Standards for Adhesives and Sealants (9VAC5-45, Article 6). The regulatory action is to be effective as provided in the Administrative Process Act.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of these regulations is to require owners to limit emissions of air pollution from portable fuel containers, certain consumer products, architectural and industrial maintenance coatings, adhesives and sealants, and mobile equipment repair and refinishing operations to the level necessary for (i) the protection of public health and welfare, and (ii) the attainment and maintenance of the air quality standards. The proposed amendments are being made to extend the applicability of existing standards for the control of VOC emissions from these consumer and commercial products into the Richmond VOC Emissions Control Areas. This action is being taken to allow Virginia to meet its obligation to implement control measures within the Richmond Ozone Maintenance Area.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The proposed regulatory action added a new chapter (9VAC5-45) specifically for regulations pertaining to consumer and commercial products and would be applicable to specific product types and the owners that are involved in the manufacture, distribution, retail sales and in some cases, the marketing and use of those products in certain VOC Emissions Control Areas. This proposed regulatory action also amended an article in Chapter 40 that pertains to shops that apply some types of paints and coatings to mobile sources in VOC Emissions Control Areas.

In Part I of the new Chapter 45, special provisions specified the general testing, monitoring, compliance, notification, recordkeeping and reporting requirements that would be applicable to all articles in the new chapter and specified certain other sections of the regulations that would not be generally applicable. Exceptions to the special provisions were addressed in each individual article of the new chapter.

In Part II of the new Chapter 45:

1. The proposed regulatory action established standards for Portable Fuel Containers for products manufactured before and after May 1, 2010 as new Articles 1 and 2 in Chapter 45, respectively, and applied to all of the products subject to the current provisions of Chapter 40, Article 42 Portable Fuel Container Spillage. Article 1 clarified some Article 42 exemptions and definitions, added another exemption category, removed obsolete standards and their associated administrative requirements, and provided criteria for sell-through of products. Because Article 1 applied to all products manufactured before May 1, 2010 and was designed to replace Chapter 40, Article 42, the compliance schedule that was proposed for Article 1 was the same as that in Chapter 40, Article 42. Article 2 applied to all portable fuel container products manufactured on or after May 1, 2010 and required board pre-certification of new portable fuel container products as compliant with new labeling requirements and with new and more stringent design and performance standards. Article 2 also included applicability to a new category of owner, and added (i) new and revised exemptions, (ii) new certification procedures, (iii) new testing standards, and (iv) alternative compliance provisions for innovative products over those provisions applicable under Chapter 40, Article 42. The new Article 2 specified a compliance deadline no later than May 1, 2010. The new Article 1 applied only in the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The new Article 2 applied in the Northern Virginia, Fredericksburg and Richmond VOC Emissions Control Areas. Chapter 40, Article 42 will be repealed at an appropriate time after the standards in the new Article 1 are effective.

2. The proposed regulatory action established standards for Consumer Products manufactured before and after May 1, 2010 as new Articles 3 and 4 in Chapter 45, respectively and applied to all of the products subject to the current provisions of Chapter 40, Article 50 Consumer Products. Article 3 pertained to consumer products manufactured before May 1, 2010, clarified some definitions and standards, made the Alternative Control Plan procedures more flexible, revised labeling, reporting and other administrative requirements, and clarified sell-through criteria. Article 3 applied to all products manufactured before May 1, 2010 and was designed to replace Chapter 40, Article 50, therefore the compliance schedule proposed for Article 3 was the same as Chapter 40, Article 50. Article 4 applied to all consumer products manufactured after May 1, 2010 and included all of the changes made in Article 3, added more definitions and standards for some new product categories and established new labeling and other administrative requirements. Article 4 specified a compliance deadline no later than May 1, 2010. The new Article 3 applied only in the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The new Article 4 applied in the Northern Virginia, Fredericksburg and Richmond VOC Emissions Control

Areas. Chapter 40, Article 50 will be repealed at an appropriate time after the standards in the new Articles 3 and 4 are effective.

3. The proposed regulatory action established standards for Architectural and Industrial Maintenance Coatings and incorporated all of the provisions of Chapter 40, Article 49 Emission Standards for Architectural and Industrial Maintenance Coatings into a new Article 5 in Chapter 45, except that the new Article 5 removed some obsolete reporting requirements and changed the remaining one to a recordkeeping requirement. The standards and other provisions of the new Article 5 were not substantively changed from what is in Chapter 40, Article 49, therefore no new compliance dates were proposed for the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The standards and other provisions were extended into the Richmond VOC Emissions Control Area with a proposed compliance deadline of May 1, 2010. Chapter 40, Article 49 will be repealed at an appropriate time after the new Article 5 standards are effective.

4. The proposed regulatory action added a new regulation, Article 6 in the new chapter 45, which established new emission standards for Adhesives and Sealants. The provisions of this article applied to owners who sell, supply, offer for sale or manufacture for sale commercial adhesives, sealants, adhesive primers or sealant primers that contain volatile organic compounds within the Northern Virginia, Fredericksburg and Richmond VOC Emissions Control Areas. The provisions also applied to owners that use, apply for compensation or solicit the use or application of such products in those areas. Exempted from the regulation was any such product manufactured in the Northern Virginia, Fredericksburg or Richmond VOC Emissions Control Areas for shipment and use outside of these areas. The provisions of this regulation did not apply to a manufacturer or distributor who sells, supplies, or offers for sale such products that did not comply with the VOC standards as long as the manufacturer or distributor could demonstrate both that the product was intended for shipment and use outside of those areas and that the manufacturer or distributor had taken reasonable prudent precautions to assure that the product was not distributed in those areas. A number of product-specific exemptions were also allowed. VOC content limits were specified for different product categories. Control technology guidelines were offered as an alternate means of achieving compliance with the standards. Test methods, registration requirements and recordkeeping procedures were provided. This article specified a compliance deadline of May 1, 2010.

5. The proposed regulatory action established standards for asphalt paving operations and incorporated all of the provisions of Chapter 40, Article 39 Emission Standards for Asphalt Paving Operations as a new Article 7 in Chapter 45. Applicability provisions in Article 7 applied to owners instead of sources and a new definition of paving operations was added that clarified the types of operations to which the provisions of the regulation applied. Since the standards and other provisions in this article were not substantively changed, no new compliance date was proposed. Chapter 40, Article 39 will be repealed at an appropriate time after the new Article 7 standards are effective.

The original proposal has been revised in significant ways:

1. The text of the original proposal included all of the textual changes to the regulations that were included in a similar, and recently effective, regulation revision (revision D06, also titled "Consumer and Commercial Products"). This original regulatory action had preserved all of the changes proposed by revision D06 in the event that revision D06 was delayed or withdrawn in its entirety. Because revision D06 became effective on March 17, 2010, this amendment has been revised to remove the changes already incorporated into regulation by revision D06.

2. Compliance dates originally proposed as May 1, 2010 for the Richmond VOC Emissions Control Area have been changed to a future date more consistent with the regulatory process timeline. Compliance dates originally proposed as May 1, 2010 for the Northern Virginia and Fredericksburg VOC Emissions Control Areas have already been revised to August 1, 2010 in new effective regulatory requirements resulting from revision D06. The August 1, 2010 compliance dates currently effective for the Northern Virginia and Fredericksburg VOC Emissions Control Areas have been preserved.

3. Language supporting the phase-in of standards applicable to the use of single-ply roof membrane adhesive and sealants has been changed to provide a similar but separate compliance schedule for the phase-in of that standard in the Richmond VOC Emissions Control Area. A temporary exemption for the manufacture and distribution of single-ply roof membrane adhesives and sealants, not originally part of this proposal but part of the newly effective regulatory language, has been preserved.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

1. Public: The primary advantage to the public is that the adoption of these regulations will significantly decrease emissions of VOCs in the Richmond VOC Emission Control Area, thus benefiting public health and welfare. The primary disadvantage to the public is the inconvenience of having certain familiar noncompliant products become unavailable within the applicable area, and having to pay a slightly increased cost for the replacement compliant products.

2. Regulated Community: The primary advantage to the regulated community is that the regulations implemented in the Richmond VOC Emissions Control Area are consistent with similar regulations effective in Northern Virginia and nearby states. The primary disadvantages are that there may be more costs associated with distributing compliant products within the Richmond VOC Emissions Control Area, there may be fewer days that certain products may be applied, and there may be a need for worker training for some users to learn how to apply some of the compliant products correctly.

3. Department: The primary advantages to the department are that the adoption of these regulations will allow Virginia to attain and maintain air quality standards and improve public health of Virginians. There is no disadvantage to the department.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

The text of the original proposal included all of the textual changes to the regulations that were included in a similar, and recently effective, regulation revision (revision D06, also titled "Consumer and Commercial Products"). The original proposal preserved all of the changes proposed by revision D06 in the event that revision D06 was delayed or withdrawn in its entirety. Because revision D06 became effective on March 17, 2010, this amendment has been revised to remove all of the changes already incorporated into regulation by revision D06. For example, this revision (J07) originally proposed key event dates such as regulatory dates, applicability dates, and compliance dates as May 1, 2010. When revision D06 became effective, the corresponding dates in that revision were August 1, 2010. In this final version of revision J07, no change from the corresponding effective Revision D06 dates (August 1, 2010) are made. But those dates do represent changes from revision J07 as originally proposed and it is a significant change.

Other changes from the original proposal:

Section number	Requirement at proposed stage	What has changed	Rationale for change
Chapter 20, Part I. Administrative.			
20-21.	Documents incorporated by reference. Contains a list of documents previously incorporated into the regulations.	Removed.	Already effective as proposed.
Chapter 40, Part II. Emission standards.			
40-7050	Compliance schedules. Specifies the compliance date for the Richmond area is May 1, 2010.	*Compliance date for the Richmond area is changed to a future date.	Necessary to avoid applying requirements retroactively.
Chapter 45, Part I. Special provisions.			
45-10.	Applicability. Specifies special provisions that are generally applicable and excludes other provisions except as specified as applicable in individual articles.	Removed.	Already effective as proposed.
45-20.	Compliance. Specifies that compliance is necessary with certain state and federal provisions or may be found in violation.	Removed.	Already effective as proposed.
45-30.	Emission testing. Specifies how emissions testing must be conducted and reported.	Removed.	Already effective as proposed.
45-40.	Monitoring. Specifies how emissions monitoring must be conducted and reported.	Removed.	Already effective as proposed.
45-50.	Notification, records and reporting. Specifies certain minimal notifications, reports, and recordkeeping requirements.	Removed.	Already effective as proposed.
Chapter 45, Part II. Emission Standards.			
Article 1. Emission Standards for Portable Fuel Containers Manufactured before August 1, 2010.			
45-80.	Definitions. Defines terms used in Article 1.	Removed.	Already effective as proposed.
45-100.	Administrative requirements.	Removed.	Already effective as proposed.
45-110.	Compliance.	Removed.	Already effective as proposed.
45-120.	Compliance schedules. Specifies that all products must comply by dates consistent with the existing requirements in Chapter 40. Also contains waiver	Removed.	Already effective as proposed.

	requirements.		
45-130.	Test methods and procedures. Specifies the test methods that must be used to determine compliance with the standards.	Removed.	Already effective as proposed.
45-140.	Monitoring. Specifies which special monitoring provisions of Chapter 45, Part I apply and which do not apply.	Removed.	Already effective as proposed.
45-150.	Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of Chapter 45, Part I apply and which do not apply.	Removed.	Already effective as proposed.
Article 2. Emission Standards for Portable Fuel Containers Manufactured on or after August 1, 2010.			
45-180.	Definitions. Defines terms used in Article 2.	Removed.	Already effective as proposed.
45-200.	Certification procedures. Specifies the application requirements, and the review and approval procedures for certification of applicable products.	Preserves style, numbering, and other changes that are already effective.	Already effective (for products manufactured before August 1, 2010 instead of May 1, 2010).
45-210.	Innovative products. Specifies a procedure and application requirements for exempting certain innovative products from the operation and design standards applicable to other portable fuel container products.	Removed.	Already effective as proposed.
45-220.	Administrative requirements. Specifies product labeling requirements.	Removed.	Already effective as proposed.
45-230.	Compliance. Specifies which of the special provisions in Part I of Chapter 45 apply and which other regulations are generally applicable.	Removed.	Already effective as proposed.
45-240.	Compliance schedules. Specifies that all applicable products must comply by the applicable compliance date. Also contains waiver requirements	Added compliance date for the Richmond VOC emissions control area.	Necessary to ensure that requirements are not applied in the Richmond VOC emissions control area retroactively.
45-250.	Test methods and	Removed.	Already effective as

	procedures. Specifies the test methods that must be used to determine compliance with the standards.		proposed.
45-260.	Monitoring. Specifies which special monitoring provisions of Chapter 45, Part I apply and which do not apply.	Removed.	Already effective as proposed.
45-270.	Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of Chapter 45, Part I apply and which do not.	Removed.	Already effective as proposed.
Article 3. Emission Standards for Consumer Products Manufactured before August 1, 2010.			
45-290.	Exemptions. Specifies certain consumer products, characteristics, uses and areas that are exempt. Also contains waiver requirements.	Removed.	Already effective as proposed.
45-300.	Definitions. Defines terms necessary to administer the provisions of Article 3.	Preserves corrections to definitions that are already effective.	Already effective as proposed.
45-310.	Standard for volatile organic compounds. Lists the consumer product categories and the VOC content standards for applicable products. Also prohibits the manufacture, distribution and sale of noncompliant products and provides criteria for sell-through.	Preserves corrections to wording and style that are already effective.	Already effective as proposed.
45-320.	Alternative control plan (ACP) for consumer products. Specifies application and review procedures for an alternate compliance procedure for manufacturers.	Preserves corrections to style and requirements that are already effective.	Already effective as proposed.
45-330.	Innovative products. Specifies the application and review procedures for another alternate compliance procedure for manufacturers.	Removed.	Already effective as proposed.
45-340.	Administrative requirements. Specifies special aerosol and date-	Removed.	Already effective as proposed.

	of-manufacture labeling requirements for applicable products.		
45-350.	Compliance. Specifies which of the special provisions in Part I of Chapter 45, and which other regulations not specified in Part I as generally applicable.	Removed.	Already effective as proposed.
45-360.	Compliance schedules. Specifies that all products must comply by dates consistent with the existing requirements in Chapter 40.	Removed.	Already effective as proposed.
45-370.	Test methods and procedures. Specifies the test methods that must be used to determine compliance with the standards.	Removed.	Already effective as proposed.
45-380.	Monitoring. Specifies that the special monitoring provisions of Chapter 45, Part I apply to products subject to this article.	Removed.	Already effective as proposed.
45-390.	Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of Chapter 45, Part I apply and which do not.	* Preserves corrections to style and requirements that are already effective. Specifically preserves a three-year recordkeeping requirement.	Already effective as proposed.
Article 4. Emission Standards for Consumer Products Manufactured on or after August 1, 2010.			
45-400.	Applicability. Specifies which products, owners and activities within the Northern Virginia, Fredericksburg and Richmond VOC Emissions Control Areas are applicable.	Preserves corrections to style that are already effective.	Already effective (for products manufactured before August 1, 2010 instead of May 1, 2010).
45-410.	Exemptions. Specifies certain consumer products, characteristics, uses and areas that are exempt.	Removed.	Already effective as proposed.
45-420.	Definitions. Defines terms necessary to administer the provisions of Article 4.	Preserves corrections to definitions that are already effective.	Already effective as proposed.
45-430.	Standard for volatile organic compounds. Lists the consumer product categories and the VOC	Preserves corrections to wording and style that are already effective.	Already effective as proposed.

	content standards for applicable products. Also prohibits the manufacture, distribution and sale of noncompliant products.		
45-440.	Alternative control plan (ACP) for consumer products. Specifies application and review procedures for an alternate compliance procedure for manufacturers.	Preserves corrections to style and requirements that are already effective.	Already effective as proposed.
45-450.	Innovative products. Specifies the application and review procedures for another alternate compliance procedure for manufacturers.	Preserves corrections to style that are already effective.	Already effective as proposed.
45-470.	Compliance. Specifies which of the special provisions in Part I of Chapter 45, and which other regulations not specified in Part I as generally applicable.	Removed.	Already effective as proposed.
45-480.	Compliance schedules. Specifies that all applicable products must comply by the applicable compliance date.	Added compliance date for the Richmond VOC emissions control area.	Necessary to ensure that requirements are not applied in the Richmond VOC emissions control area retroactively.
45-490.	Test methods and procedures. Specifies the test methods that must be used to determine compliance with the standards.	Removed.	Already effective as proposed.
45-500.	Monitoring. Specifies that the special monitoring provisions of Chapter 45, Part I apply to consumer products subject to this article.	Removed.	Already effective as proposed.
45-510.	Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of Chapter 45, Part I apply and which do not.	* Preserves corrections to style and requirements that are already effective. Specifically preserves a three-year recordkeeping requirement.	Already effective as proposed.
Article 5. Emission Standards for Architectural and Industrial Maintenance Coatings.			
45-540.	Definitions. Defines terms necessary to administer the provisions of Article 5.	Preserves corrections to style that are already effective.	Already effective as proposed.
45-550.	Standard for volatile	Removed.	Already effective as

	organic compounds. Lists standards for specific applicable product categories, and default standards for those categories not listed. Also prohibits the manufacture, distribution, sale and application of noncompliant coating products.		proposed.
45-560.	Administrative requirements. Specifies labeling requirements.	Removed.	Already effective as proposed.
45-570.	Compliance. Specifies which of the special provisions in Part I of Chapter 45, and which other regulations apply.	Removed.	Already effective as proposed.
45-580.	Compliance schedules. Specifies that all products must comply by the applicable compliance date.	Revised compliance date for the Richmond VOC emissions control area.	Necessary to ensure that requirements are not applied in the Richmond VOC emissions control area retroactively.
45-590.	Test methods and procedures. Specifies the test methods that must be used to determine compliance with the standards.	Removed.	Already effective as proposed.
45-600.	Monitoring. Specifies that the special monitoring provisions of Chapter 45, Part I apply.	Removed.	Already effective as proposed.
45-610.	Notification, records and reporting. Specifies which recordkeeping and reporting special provisions of Chapter 45, Part I apply and which do not.	* Preserves corrections to style and requirements that are already effective. Specifically preserves a three-year recordkeeping requirement.	Already effective as proposed.
45-630.	Exemptions. Specifies certain products, uses, sizes, VOC content levels, and low usage operations are exempt. Allows the sale of non-compliant products to consumers that use add-on control technology to meet emissions limits.	Corrects a reference and section title.	Necessary to find the referenced sections.
45-640.	Definitions. Defines terms necessary to administer the provisions of Article 6.	Preserves corrections to definitions that are already effective.	Already effective as proposed.
45-650.	Lists the product	Corrects style, revises single-ply	Ensures that the

	categories and the applicable standards. Specifies applicable work practices and prohibits noncompliant products and uses.	roof membrane adhesive compliance window dates to begin on a future date and preserves and existing deferment for standards for single-ply roof membrane adhesive sales.	compliance window needed for training is in the future.
45-660.	Control technology guidelines. Specifies requirements for add-on control technologies and when they are used to comply with applicable standards.	Removed.	Already effective as proposed.
45-670.	Standard for visible emissions. Applies the existing source visible emissions standard of Chapter 40 to adhesive and sealant operations.	Removed.	Already effective as proposed.
45-680.	Administrative requirements. Specifies labeling requirements for applicable products.	Removed.	Already effective as proposed.
45-690.	Compliance. Specifies that the special compliance provisions in Part I of Chapter 45 apply to owners and their adhesive and sealant products.	Removed.	Already effective as proposed.
45-700.	Compliance schedules. Specifies that applicable products must comply by the applicable compliance date.	Revised compliance date for the Richmond VOC emissions control area.	Necessary to ensure that requirements are not applied in the Richmond VOC emissions control area retroactively.
45-710.	Test methods and procedures. Specifies that the provisions of Chapter 45, Part I and the listed test methods are used to determine compliance.	Preserves corrections to style that are already effective.	Already effective as proposed.
45-720.	Monitoring. Specifies that the special monitoring provisions of Chapter 45, Part I apply to consumer products subject to this article.	Removed.	Already effective as proposed.
45-730.	Notification, records and reporting. Specifies that the recordkeeping and reporting special provisions of Chapter 45, Part I apply and requires that records of certain information on the adhesive and sealant	* Preserves corrections to style and requirements that are already effective. Specifically preserves a three-year recordkeeping requirement.	Already effective as proposed.

	products, operations and add-on control technologies must be kept.		
45-740.	Registration. Requires owners that use add-on control technology to comply with the requirements of the article to register with the board.	Removed.	Already effective as proposed.
45-750.	Facility and control equipment maintenance and malfunction. Requires that regulatory maintenance and malfunction requirements apply.	Removed.	Already effective as proposed.
Article 7. 45-760 through 45-850	Emission Standards for Asphalt Paving Operations.	Removed.	Already effective as proposed.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

A summary and analysis of the public testimony, along with the basis for the decision of the Board, begins on page 17.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Chapter 40, Part II. Emission Standards.			
Article 48. Emission Standards for Mobile Equipment Repair and Refinishing Operations (Rule 4-48).			
40-6970 B.		Lists the areas in which the regulation is effective as the Northern Virginia and Fredericksburg VOC Emissions Control Areas.	Adds the Richmond VOC Emissions Control Area to the list of areas in which the regulation is effective. Necessary to provide adequate contingency measures for the ozone maintenance plan.

40-6970 C.	40-6975.	Lists exemptions for applicable operations.	Moved from list of applicable operations to new section. Necessary to be consistent with current regulation format.
40-7050.		Compliance schedules. Lists a deadline date for compliance with the standards within each of the two areas in which the standards apply.	Adds an appropriate future compliance deadline date for the new area in which the standards will be effective. Necessary so that the affected entities within the newly affected area know when compliance with the standard must be demonstrated.
Chapter 45, Part II. Emission Standards.			
Article 1, Emission Standards for Portable Fuel Containers Manufactured before August 1, 2010.			
45-70 C.		Specifies exemption for safety cans meeting federal requirements.	Reference revised. Necessary to meet style requirements.
Article 2, Emission Standards for Portable Fuel Containers Manufactured on or after August 1, 2010.			
45-160 C.		Specifies that the provisions of Article 2 apply to owners that manufacture, distribute and sell portable fuel container products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas.	Adds the Richmond VOC Emissions Control Area to the applicable areas. Necessary to meet contingency measures in the Richmond ozone maintenance plan.
45-170 C.		Specifies exemption for safety cans meeting federal requirements.	Reference revised. Necessary to meet style requirements.
45-240 A.		Requires compliance in the Northern Virginia and Fredericksburg VOC Emissions Control Areas by August 1, 2010.	Adds a future compliance date for the newly applicable Richmond VOC Emissions Control Area. Necessary to ensure that compliance is not applied retroactively in the new area.
Article 4. Emission Standards for Consumer Products Manufactured on or after August 1, 2010.			
45-400 C.		Specifies that the provisions of Article 4 apply to owners that manufacture, distribute and sell consumer products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas.	Adds the Richmond VOC Emissions Control Area to the applicable areas. Necessary to meet contingency measures in the Richmond ozone maintenance plan.
45-430 F.		Lists additional standards applicable to aerosol adhesives.	Revised introductory language. Necessary to be consistent with the standard language format used elsewhere in the chapter.
45-480.		Requires compliance in the Northern Virginia and Fredericksburg VOC Emissions Control Areas by August 1, 2010.	Adds a future compliance date for the newly applicable Richmond VOC Emissions Control Area. Necessary to ensure that compliance is not applied retroactively in the new area.
Article 5. Emission Standards for Architectural and Industrial Maintenance Coatings.			
45-520 B.		Specifies that the provisions of Article 5 apply to owners within the Northern Virginia and Fredericksburg VOC	Adds the Richmond VOC Emissions Control Area to the applicable areas. Necessary to meet contingency measures in the Richmond ozone maintenance plan.

		Emissions Control Areas.	
45-530 A.		Specifies that coatings sold or manufactured for use outside of the Northern Virginia and Fredericksburg VOC Emissions Control Areas are exempt.	Adds the Richmond VOC Emissions Control Area to the exempted areas. Necessary to conform to the intent of the exemption.
45-580 3.		Specifies that compliance is required in the Northern Virginia and Fredericksburg VOC Emissions Control Areas by certain dates.	Adds a future compliance date for the newly applicable Richmond VOC Emissions Control Area. Necessary to ensure that compliance is required by a deadline in the new area.
Article 6. Emission Standards for Adhesives and Sealants.			
45-620 C.		Specifies that the provisions of Article 6 apply to owners within the Northern Virginia and Fredericksburg VOC Emissions Control Areas.	Adds the Richmond VOC Emissions Control Area to the applicable areas. Necessary to meet contingency measures in the Richmond ozone maintenance plan.
45-630 D.		Specifies that certain provisions of Article 6 do not apply if the total VOC emissions are less than 200 pounds per year.	Corrects an internal reference and a section title. Necessary to ensure that the exemption is correct and unambiguous.
45-650 G.		Specifies a grace period for the applicability of single-ply roof membrane adhesives and sealants,	Clarifies that the start date of the grace period is different for products in the newly applicable Richmond VOC Emissions Control Area.
45-700.		Requires compliance in the Northern Virginia and Fredericksburg VOC Emissions Control Areas by August 1, 2010.	Adds a future compliance date for the newly applicable Richmond VOC Emissions Control Area. Necessary to ensure that compliance is not applied retroactively in the new area.

Regulatory flexibility analysis

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

The regulations apply to all facilities, including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would

directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations.

Family impact

Please assess the 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.

It is not anticipated that the proposal will have a significant direct impact on families. There will be some small price increases for certain products, which will affect the disposable income of families that use those products. However, there will be positive indirect impacts in that the proposal will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION J07
CONCERNING

CONSUMER AND COMMERCIAL PRODUCTS
(9VAC5 CHAPTER 45)

INTRODUCTION

At the April 24, 2009 meeting, the Board authorized the Department to promulgate for public comment a proposed regulation revision concerning Consumer and Commercial Products.

A public hearing was advertised accordingly and held in Richmond on February 3, 2010 and the public comment period closed on February 19, 2010. The proposed regulation amendments subject to the hearing are summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering consumer and commercial products. A summary of the amendments follows.

The proposed regulatory action added a new chapter (9VAC5-45) specifically for regulations pertaining to consumer and commercial products and is applicable to specific product types and the owners that are involved in the manufacture, distribution, retail sales and in some cases, the marketing and use of those products in certain VOC Emissions Control Areas. This proposed regulatory action also amended an article in Chapter 40 that pertains to shops that apply some types of consumer and commercial products in VOC Emissions Control Areas.

In Part I of the new Chapter 45, special provisions specified the general testing, monitoring, compliance, notification, recordkeeping and reporting requirements that are applicable to all articles in the new chapter and specified certain other sections of the regulations that are not generally applicable. Exceptions to the special provisions are addressed in each individual article of the new chapter.

In Part II of the new Chapter 45:

1. The proposed regulatory action established standards for Portable Fuel Containers for products manufactured before and after May 1, 2010 as new Articles 1 and 2 in Chapter 45, respectively, and applied to all of the products subject to the current provisions of Chapter 40, Article 42 Portable Fuel

Container Spillage. Article 1 clarified some Article 42 exemptions and definitions, added another exemption category, removed obsolete standards and their associated administrative requirements, and provided criteria for sell-through of products. Because Article 1 applied to all products manufactured before May 1, 2010 and was designed to replace Chapter 40, Article 42, the compliance schedule proposed for Article 1 is the same as that in Chapter 40, Article 42. Article 2 applied to all portable fuel container products manufactured on or after May 1, 2010 and required board pre-certification of new portable fuel container products as compliant with new labeling requirements and with new and more stringent design and performance standards. Article 2 also included applicability to a new category of owner, and added (i) new and revised exemptions, (ii) new certification procedures, (iii) new testing standards, and (iv) alternative compliance provisions for innovative products over those provisions now applicable under Chapter 40, Article 42. The new Article 2 specified a compliance deadline no later than May 1, 2010. The new Article 1 applied only in the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The new Article 2 applied in the Northern Virginia, Fredericksburg and Richmond VOC Emissions Control Areas. Chapter 40, Article 42 will be repealed at an appropriate time after the standards in the new Article 1 are effective.

2. The proposed regulatory action established standards for Consumer Products manufactured before and after May 1, 2010 as a new Articles 3 and 4 in Chapter 45, respectively and applied to all of the products subject to the current provisions of Chapter 40, Article 50 Consumer Products. Article 3 pertained to consumer products manufactured before May 1, 2010, clarified some definitions and standards, made the Alternative Control Plan procedures more flexible, revised labeling, reporting and other administrative requirements, and clarified sell-through criteria. Article 3 applied to all products manufactured before May 1, 2010 and was designed to replace Chapter 40, Article 50, therefore the compliance schedule proposed for Article 3 is the same as Chapter 40, Article 50. Article 4 applied to all consumer products manufactured after May 1, 2010 and included all of the changes made in Article 3, added more definitions and standards for some new product categories and established new labeling and other administrative requirements. Article 4 specified a compliance deadline no later than May 1, 2010. The new Article 3 applied only in the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The new Article 4 applied in the Northern Virginia, Fredericksburg and Richmond VOC Emissions Control Areas. Chapter 40, Article 50 will be repealed at an appropriate time after the standards in the new Articles 3 and 4 are effective.

3. The proposed regulatory action established standards for Architectural and Industrial Maintenance Coatings and incorporated all of the provisions of Chapter 40, Article 49 Emission Standards for Architectural and Industrial Maintenance Coatings into a new Article 5 in Chapter 45, except that the new Article 5 removed some obsolete reporting requirements and changed the remaining one to a recordkeeping requirement. The standards and other provisions of the new Article 5 were not substantively changed from what is in Chapter 40, Article 49, therefore no new compliance dates were proposed for the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The standards and other provisions were extended into the Richmond VOC Emissions Control Area with a proposed compliance deadline of May 1, 2010. Chapter 40, Article 49 will be repealed at an appropriate time after the new Article 5 standards are effective.

4. The proposed regulatory action added a new regulation, Article 6 in the new chapter 45, which established new emission standards for Adhesives and Sealants. The provisions of this article applied to owners who sell, supply, offer for sale or manufacture for sale commercial adhesives, sealants, adhesive primers or sealant primers that contain volatile organic compounds within the Northern Virginia, Fredericksburg and Richmond VOC Emissions Control Areas. The provisions also applied to owners that use, apply for compensation or solicit the use or application of such products in those areas. Exempted from the regulation was any such product that was manufactured in the Northern Virginia, Fredericksburg or Richmond VOC Emissions Control Areas for shipment and use outside of these areas. The provisions of this regulation were not applied to a manufacturer or distributor who sells, supplies, or offers for sale such products that do not comply with the VOC standards as long as the manufacturer or distributor could demonstrate both that the product was intended for shipment and use outside of those areas and that the manufacturer or distributor had taken reasonable prudent precautions to assure that the product was not distributed in those areas. A number of product-specific exemptions were also allowed. VOC content

limits were specified for different product categories. Control technology guidelines were offered as an alternate means of achieving compliance with the standards. Test methods, registration requirements and recordkeeping procedures were provided. This article specified a compliance deadline of May 1, 2010.

5. The proposed regulatory action established standards for asphalt paving operations and incorporated all of the provisions of Chapter 40, Article 39 Emission Standards for Asphalt Paving Operations as a new Article 7 in Chapter 45. Applicability provisions in Article 7 applied to owners instead of sources and a new definition of paving operations was added that clarified the types of operations to which the provisions of the regulation apply. Since the standards and other provisions in this article are not substantively changed, no new compliance date was proposed. Chapter 40, Article 39 will be repealed at an appropriate time after the new Article 7 standards are effective.

The text of these new articles included the textual changes to the regulations that were included in the recently adopted revision D06 (also titled as Consumer and Commercial Products). This regulatory action preserved changes made by revision D06 in the event that revision D06 was delayed or withdrawn in its entirety. This regulatory action also incorporated the following substantive changes to revision D06:

1. This proposed regulatory action expanded the applicability of the new Article 2 concerning portable fuel containers, the new Article 4 concerning consumer products, the new Article 5 concerning architectural and maintenance coatings, and the new Article 6 concerning adhesives and sealants into the Richmond VOC Emissions Control Area. It did not affect the applicability of Article 7 concerning asphalt paving operations, which already applied in all VOC emissions control areas;
2. This regulatory action extended compliance dates originally proposed in revision D06 as January 1, 2009 to what was at the time a more reasonable date in the future (May 1, 2010); and
3. This proposed regulatory action extended the standards and other provisions for 9VAC5-40, Article 48, concerning mobile equipment repair and refinishing operations that are currently applicable only in the Northern Virginia and Fredericksburg VOC Emissions Control Areas into the Richmond VOC Emissions Control Area. A compliance deadline of May 1, 2010 was specified for applicability of the standards and other provisions within the Richmond VOC Emissions Control Area.

Because revision D06 became effective on March 17, 2010, this revision will be changed to remove the amendments incorporated into regulation by revision D06 and to preserve the new regulatory compliance and implementation dates in the Northern Virginia and Fredericksburg VOC Emissions Control Areas (August 1, 2010). Compliance dates associated with applying regulatory standards in Chapter 45 and in Chapter 40, Article 48 in the Richmond VOC Emissions Control Area will also be revised from May 1, 2010 to a future date more consistent with the regulatory progress of this proposal.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Richmond, Virginia on February 3, 2010. One person attended the hearing and offered testimony, and two additional written comments were received during the public comment period. As required by law, notice of this hearing was given to the public on or about December 21, 2009 in the Virginia Register and in the Richmond Times Dispatch. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the Department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the Department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The Board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The Board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT:** Language should conform with earlier regulatory language.

COMMENTER: Petrina Jones of Vectre Corporation, representing Jared Blum of the EPDM Roofing Association.

TEXT: The proposed regulation should be modified to conform with the final phase-in language for single-ply roofing adhesives, sealants and primers in 9VAC5-45-650, specifically in subsections A, G and H of that section.

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

2. **SUBJECT:** Inappropriate implementation date for Richmond.

COMMENTER: David Darling, American Coatings Association (ACA).

TEXT: The ACA believes that the proposed implementation date of May 1, 2010 is problematic. It takes significant time to reformulate products and revise labels, to update computer systems to prevent shipment of "non-compliant" products into the regulated areas, and to communicate to distributors, customers and specifiers which products are compliant. In order to allow Virginia to finalize and adopt the amendments and to allow industry time to meet all of the new demands - we need until August 1, 2010.

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

3. **SUBJECT:** Exemption for toilet/urinal care products containing paradichlorobenzene (PDCB).

COMMENTER: Kathie Tryson, Willert Home Products

TEXT: Willert Home Products objects to the creation of a new product category, "Toilet/Urinal Care Products," and the proposed 3% VOC standard for non-aerosol toilet/urinal care products, which taken together will effectively prohibit the use of paradichlorobenzene toilet/urinal care products in Virginia. Prohibiting the use of PDCB will not accomplish the goal of reducing VOC emissions, and at the same time it will deny Virginia consumers an effective and economical product, and will ignore the beneficial characteristics of PDCB. PDCB has a very low reactivity and therefore contributes very little to ozone formation compared with other products that can be up to 25 times more reactive in forming smog. Other products are not as effective, so consumers use more, with the unintended consequence of generating even more smog. PDCB products are low cost and are widely used by businesses and by consumers with low incomes and large families who don't need unnecessary expenses in these depressed economic times. PDCB is also classified as "not likely to be carcinogenic to humans." The exemption for air fresheners and insecticides containing at least 98% PDCB should be extended to toilet/urinal care products.

RESPONSE: The purpose of this revision is not to implement a new Product Category, but to preserve the 3% VOC standard for toilet/urinal care products proposed under a previous revision (D06) for the Northern Virginia and Fredericksburg VOC Emissions Control Areas. This revision will only extend applicability of that standard (among others) into the Richmond VOC Emissions Control Area. One of industry's primary objectives in working with the Department to draft the regulations in Chapter 45 was to implement the same or similar standards in all of the applicable areas. Meeting this objective also simplifies compliance for both industry and the Department. Implementing such an exemption only in the Richmond VOC Emissions Control Area would not improve the health and welfare of the citizens of Virginia, would complicate compliance, and would set a precedent for inconsistency within these regulations. No change has been made to the proposed regulation based upon this comment.

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