

Regulations

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D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

9VAC5-80-650. Malfunction.

A. ~~A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology based emission limitations if~~ In the event of a malfunction, the owner may demonstrate that the conditions of subsection B of this section are met.

B. ~~The affirmative defense of malfunction shall be demonstrated by the permittee may,~~ through properly signed, contemporaneous operating logs, or other relevant evidence ~~that,~~ show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.
2. The permitted facility was at the time being properly operated.
3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.
4. The permittee notified the board of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification ~~shall~~ should include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing. ~~The notification may be delivered by electronic mail, facsimile transmission, telephone, telegraph, or any other method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9VAC5-80-490 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9VAC5-20-180 C.~~

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

VA.R. Doc. No. R17-4804; Filed September 14, 2016, 1:40 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law

where no agency discretion is involved and (ii) § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-140. Regulation for Emissions Trading Programs (Rev. D16) (repealing 9VAC5-140-1010 through 9VAC5-140-3880).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; §§ 108, 109, 110 and 302 of the Clean Air Act; 40 CFR Part 51.

Effective Date: November 16, 2016.

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Summary:

The Clean Air Interstate Rule (CAIR) was an emissions trading program intended to control nitrogen oxides (NO_x) and sulfur dioxide (SO₂), which contribute to harmful levels of fine particle matter and ozone in downwind states. On August 8, 2011, the Environmental Protection Agency (EPA) replaced CAIR with the Cross-State Air Pollution Rule (CSAPR), which is being implemented in Virginia under the associated federal implementation plan (FIP). Chapter 291 of the 2011 Acts of Assembly requires that §§ 10.1-1327 and 10.1-1328 of the Code of Virginia and any regulations implementing CAIR be repealed when facilities in the Commonwealth become subject to the requirements of a FIP adopted by EPA in response to the remand of CAIR. Because CAIR has been replaced by CSAPR, and Virginia is subject to the CSAPR FIP, Virginia may now, as required by Chapter 291, repeal its CAIR regulations.

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STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exclusion from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.