COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION

9VAC5 CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

PART II.
Permit Procedures.

ARTICLE 1.
Federal Operating Permits for Stationary Sources.

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9VAC5-80-50. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the following stationary sources:

1. Any major source.

2. Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the federal Clean Air Act.

3. Any source, including an area source, subject to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act.

4. Any affected source or any portion thereof not subject to Article 3 (9VAC5-80-360 et seq.) of this part.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Any source that would be subject to this article solely because it is subject to the provisions of 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters), as prescribed in Article 5 (9VAC5-50-400 et seq.) of 9VAC5 Chapter 50.

2. Any source that would be subject to this article solely because it is subject to the provisions of 40 CFR Part 61, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos, Standard for Demolition and Renovation, as prescribed in Article 1 (9VAC5-60-60 et seq.) of 9VAC5 Chapter 60.

3. Any source that would be subject to this article solely because it is subject to regulations or requirements concerning prevention of accidental releases under § 112(r) of the federal Clean Air Act.

4. Any emissions unit that is determined to be shutdown under the provisions of 9VAC5-20-220.

D. Sources shall be deferred from initial applicability as follows.

1. Area sources subject to this article under subsection A 2 or subsection A 3 of this section shall be deferred from the obligation to obtain a permit under this article except as follows.

a. In cases for which EPA has promulgated a standard under § 111 or § 112 and has declared that the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

b. In cases for which EPA has promulgated a standard under § 111 or § 112 after July 21, 1992, and has failed to declare whether the facility or source

category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

2. The following sources shall not be deferred from the obligation to obtain a permit under this article:

a. Major sources.

b. Solid waste incineration units subject to the provisions of 9VAC5 Chapter 40 (9VAC5-40-10 et seq.) and 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) as adopted pursuant to § 129 (e) of the federal Clean Air Act.

3. Any source deferred under subsection D 1 of this section may apply for a permit. The board may issue the permit if the issuance of the permit does not interfere with the issuance of permits for sources that are not deferred under this section or otherwise interfere with the implementation of this article.

E. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this article by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

F. Particulate matter emissions shall be used to determine the applicability of this article to major sources only if particulate matter (PM_{10}) emissions cannot be quantified in a manner acceptable to the board.

9VAC5-80-60. Definitions.

A. For the purpose of Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 76, 77 or 78.

"Allowable emissions" means the emission rates of a stationary source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

a. Applicable emission standards.

b. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.

c. Any other applicable emission limitation, including those with a future compliance date.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future effective compliance dates):

a. Any standard or other requirement provided for in the implementation plan, including any source-specific provisions such as consent agreements or orders.

b. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to the state operating permit program, except for terms or conditions derived from applicable state requirements.

c. Any standard or other requirement prescribed under the Regulations for the Control and Abatement of Air Pollution, particularly the provisions of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources), adopted pursuant to requirements of the federal Clean Air Act or under §§ 111, 112 or 129 of the federal Clean Air Act.

d. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

e. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or Regulations for the Control and Abatement of Air Pollution.

f. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

g. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

h. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

i. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

j. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1700 et seq.) of this part.

"Applicable requirement" means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

a. Any standard or other requirement prescribed by any regulation of the board that is not included in the definition of applicable federal requirement.

b. Any regulatory provision or definition directly associated with or related to any of the specific state requirements listed in this definition.

"Area source" means any stationary source that is not a major source. For purposes of this article, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Complete application" means an application that contains all the information required pursuant to 9VAC5-80-80 and 9VAC5-80-90 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this regulation, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

Whenever the term "designated representative" is used in this regulation, the term shall be construed to include the alternate designated representative.

"Draft permit" means the version of a permit for which the board offers public participation under 9VAC5-80-270 or affected state review under 9VAC5-80-290.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in 40 CFR Part 72.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited, to the following:

1. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an approved implementation plan.

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.

6. Limitations and conditions that are part of a state operating permit issued under regulations approved by the EPA into the implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a Virginia regulation or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that the EPA has legal authority to create.

"Final permit" means the version of a permit issued by the board under this article that has completed all review procedures required by 9VAC5-80-270 and 9VAC5-80-290.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-120.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Insignificant activity" means any emission unit listed in 9VAC5-80-720 A, any emissions unit that meets the emissions criteria described in 9VAC5-80-720 B, or any emissions unit that meets the size or production rate criteria in 9VAC5-80-720 C.

"Major source" means

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more

of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plant.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS

codes 325193 or 312140).

(21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category regulated under § 111 or § 112 of the federal Clean Air Act for which the administrator has made an affirmative determination under § 302(j) of the federal Clean Air Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NO_X requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, lack of or poor preventative maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in

accordance with 9VAC5-80-10 or Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1700 et seq.), or Article 9 (9VAC5-80-2000 et seq.) of this part, promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Permit," unless the context suggests otherwise, means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

"Permit modification" means a revision to a permit issued under this article that meets the requirements of 9VAC5-80-210 on minor permit modifications, 9VAC5-80-220 on group processing of minor permit modifications, or 9VAC5-80-230 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9VAC5-80-210, 9VAC5-80-220 or 9VAC5-80-230 or any administrative permit amendment that meets the requirements of 9VAC5-80-200.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Proposed permit" means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with 9VAC5-80-290.

"Regulated air pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound.

b. Any pollutant for which an ambient air quality standard has been promulgated.

c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.

d. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

e. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.

f. Any pollutant subject to an applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Research and development facility" means all the following as applied to any stationary source:

a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or into refining and improving existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge.

b. The source is operated under the close supervision of technically trained personnel.

c. The source is not engaged in the manufacture of products in any manner inconsistent with subdivision a (i) or (ii) of this definition.

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Responsible official" means one of the following:

a. For a business entity, such as a corporation, association or cooperative:

(1) The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the business entity, or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board;

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

d. For affected sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative or any other person specified in this definition for any other purposes under this article.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9VAC5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21). At the request of the applicant, any research and development facility may be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or 112(g) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in section 61.07 of 40 CFR 61.07; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

9VAC5-80-70. General.

A. No permit may be issued pursuant to this article until the article has been approved by the administrator, whether full, interim, partial, for federal delegation purposes, or otherwise.

B. If requested in the application for a permit or permit renewal submitted pursuant to this article, the board may combine the requirements of and the permit for a source subject to the state operating permit program with the requirements of and the permit for a source subject to this article provided the application contains the necessary information required for a permit under the state operating permit program.

C. For the purpose of this article, the phrase "Regulations for the Control and Abatement of Air Pollution" means 9VAC5 Chapter 10 (9VAC5-10-10 et seq.) through 9VAC5 Chapter 80 (9VAC5-80-10 et seq.). For purposes of implementing and enforcing those provisions of this article associated with applicable federal requirements as well as those provisions of this article intended to implement Title V of the federal Clean Air Act, the phrase "Regulations for the Control and Abatement of Air Pollution" means only those provisions that have been approved by EPA as part of the implementation plan or otherwise have been approved by or found to be acceptable by EPA for the purpose of implementing requirements of the federal Clean Air Act. For the purpose of this article, terms and conditions relating to applicable federal requirements shall be derived only from provisions that qualify as applicable federal requirements.

9VAC5-80-80. Applications.

A. A single application is required identifying each emission unit subject to this article. The application shall be submitted according to the requirements of this section, 9VAC5-80-90, and procedures approved by the board. Where several units are included in one stationary source, a single application covering all units in the source shall be submitted. A separate application is required for each stationary source subject to this article.

B. For each stationary source, the owner shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. The owner of a stationary source applying for a permit under this article for the first time shall submit an application within 12 months after the source becomes subject to this article, except that stationary sources not deferred under 9VAC5-80-50 D shall submit their applications on a schedule to be determined by the department but no later than 12 months following the effective date of approval of this article by the administrator, to include approval for federal delegation purposes.

2. The owner of a source subject to the requirements of the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this

article would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of the new source review program.

3. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than eighteen months prior to the date of permit expiration.

D. The following requirements concerning the completeness of the permit application apply to sources subject to this article:

1. To be determined complete, an application shall contain all information required pursuant to 9VAC5-80-90.

2. Applications for permit revision or for permit reopening shall supply information required under 9VAC5-80-90 only if the information is related to the proposed change.

3. Within 60 days of receipt of the application, the board shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the board shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the board does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the board finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under the new source review program.

8. Upon notification by the board that the application is complete or after 60 days following receipt of the application by the board, the applicant shall submit three additional copies of the complete application to the board.

E. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. An applicant shall provide additional information as necessary to address any

requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. The following requirements concerning the application shield apply to sources subject to this article.

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this article until the board takes final action on the application under 9VAC5-80-150.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this article.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either 9VAC5-80-210 F or 9VAC5-80-220 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this article until the board takes final action on the application under 9VAC5-80-150.

4. If the source notifies the board that it wants to make an operational flexibility permit change under 9VAC5-80-280 B, the failure of the source to have a permit modification or operation of the source without a permit modification for the permit change shall not be a violation of this article unless the board notifies the source that the change is not a permit change as specified in 9VAC5-80-280 B 1 a.

5. If an applicant submits a timely and complete application under this section for a permit renewal but the board fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9VAC5-80-140, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subsections F 1 and F 5 (ii) of this section shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the board any additional information identified as being needed to process the application.

G. Any application form, report, compliance certification, or other document submitted to the board shall meet the requirements of 9VAC5-20-230.

9VAC5-80-90. Application information required.

A. The board shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information as follows shall be included.

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

D. Emissions-related information as follows shall be included.

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit with the following exceptions.

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level or size of the unit is deemed to be insignificant under 9VAC5-80-720 B or C shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in 9VAC5-80-720 A.

(2) Regardless of the emissions units designated in 9VAC5-80-720 A or C or the emissions levels listed in 9VAC5-80-720 B, the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination of the applicability of this article, the determination or imposition of any applicable requirement, or the calculation of permit fees.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent quantifiable regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

2. Additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to

Article 2 (9VAC5-80-310 et seq.) of this part as required by the board. Identification and description of all points of emissions described in subsection D 1 of this section in sufficient detail to establish the basis for fees and applicability of requirements of Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

7. Other information required by any applicable requirement (including information related to stack height limitations required under 9VAC5-40-20 I or 9VAC5-50-20 H).

8. Calculations on which the information in subsections D 1 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

E. Air pollution control requirements as follows shall be included.

1. Citation and description of all applicable requirements, including those covering activities deemed insignificant under Article 4 (9VAC5-80-710 et seq.) of this part.

2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information that may be necessary to implement and enforce other requirements of Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act or to determine the applicability of such requirements.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the board to define alternative operating scenarios identified by the source pursuant to 9VAC5-80-110 J or to define permit terms and conditions implementing operational flexibility under 9VAC5-80-280.

I. Compliance plan as follows shall be included.

1. A description of the compliance status of the source with respect to all applicable requirements.

2. A description as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

3. A compliance schedule as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the board if no specific requirement exists.

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or board order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

4. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

J. Compliance certification information as follows shall be included.

1. A certification of compliance with all applicable requirements by a

responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the board.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112(r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part.

9VAC5-80-100. Emission caps.

A. The board may establish an emission cap for sources or emissions units applicable under this article when the applicant requests that a cap be established.

B. The criteria in subsections B 1 through B 5 of this section shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in Regulations for the Control and Abatement of Air Pollution prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this article.

2. A permit issued under this article may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in Regulations for the Control and Abatement of Air Pollution prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission

standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination thereof for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination thereof.

C. Using the significant modification procedures of 9VAC5-80-230, an emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subsections B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to the new source review program.

9VAC5-80-110. Permit content.

A. General information applies as follows.

1. For major sources subject to this article, the board shall include in the permit all applicable requirements for all emissions units in the major source.

2. For any source other than a major source subject to this article, the board shall include in the permit all applicable requirements that apply to emissions units that cause the source to be subject to this article.

3. For all sources subject to this article, the board shall include in the permit applicable requirements that apply to fugitive emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

4. Each permit issued under this article shall include the elements listed in subsections B through N of this section.

B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

3. If applicable requirements contained in Regulations for the Control and Abatement of Air Pollution allow a determination of an alternative emission limit at a source, equivalent to that contained in Regulations for the Control and Abatement of Air Pollution, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

C. Each permit shall contain terms and conditions identifying equipment specifications and operating parameters in accordance with the following:

1. Each permit shall contain terms and conditions setting out the following elements identifying equipment specifications and operating parameters:

a. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

b. Specifications for air pollution control equipment installed or to be installed.

c. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved.

2. The information on any specification required in subsections C 1 a and b may be included in the permit for informational purposes only and does not form an enforceable term or condition of the permit except in the following cases:

a. The specification is an applicable federal requirement.

b. The specification is derived from and necessary to enforce an applicable federal requirement.

c. The operation of the source contrary to the specification would violate an applicable federal requirement.

d. The owner voluntarily takes the specification as a state

enforceable term or condition of the permit pursuant to 9VAC5-80-300.

D. Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specific monitoring or testing is adequate to assure compliance at least to the same extent as the applicable requirements relating to monitoring or testing that are not included in the permit as a result of such streamlining.

2.Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subsection F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of subsection E 2 of this section.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. Recordkeeping and reporting requirements apply as follows.

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements.

(2) The date(s) analyses were performed.

(3) The company or entity that performed the analyses.

(4) The analytical techniques or methods used.

(5) The results of such analyses.

(6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 9VAC5-80-80 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The board shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in subsection L of this section, 9VAC5-80-240 and

9VAC5-80-260. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the board, within a reasonable time, any information that the board may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the board copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the board along with a claim of confidentiality.

H. Each permit shall contain a condition setting out the requirement to pay permit fees consistent with the fee schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part.

I. Emissions trading information as follows shall be included.

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any federally approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that Regulations for the Control and Abatement of Air Pollution provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

a. All terms and conditions required under this section except subsection N shall be included to determine compliance.

b. The permit shield described in 9VAC5-80-140 shall extend to all terms and conditions that allow such increases and decreases in emissions.

c. The owner shall meet all applicable requirements including the requirements of this article.

J. Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the board. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.

2. The permit shield described in 9VAC5-80-140 shall extend to all terms and conditions under each such operating scenario.

3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this article.

K. Consistent with subsections E and F of this section, each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the board shall contain a certification by a responsible official that meets the requirements of 9VAC5-80-80 G.

2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the board to perform the following:

a. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.

c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with 9VAC5-80-90 I.

4. Progress reports consistent with an applicable schedule of compliance and 9VAC5-80-90 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the board. Such progress reports shall contain the following:

a. Dates for achieving the activities, milestones, or compliance

required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.

b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the board) of submissions of compliance certifications.

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under subsection E of this section. If necessary, the owner or operator shall also identify any other material information that must be included in the certification to comply with § 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information.

(3) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in 9VAC5-5-80-110 K 5 c (2). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred.

(4) Such other facts as the board may require to determine the compliance status of the source.

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the board.

6. Such other provisions as the board may require.

L. Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened by the board if additional applicable federal requirements become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to 9VAC5-80-80 F.

2. The permit shall be reopened if the board or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the board determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

4. The permit shall not be reopened by the board if additional applicable state requirements become applicable to a major source prior to the expiration date established under subsection D of this section.

M. The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with Regulations for the Control and Abatement of Air Pollution, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. Federal enforceability requirements apply as follows.

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subsection N 2 of this section.

2. The board shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of 9VAC5-80-290 concerning review of proposed permits by EPA and draft permits by affected states.

3. The board may specifically designate as state enforceable any applicable state requirement that has been submitted to the administrator for review to be approved as part of the implementation plan and that has not yet been approved. The permit shall

specify that the provision will become federally enforceable upon approval of the provision by the administrator and through an administrative permit amendment.

9VAC5-80-120. General permits.

A. Requirements for board issuance of a general permit apply as follows.

1. The board may issue a general permit covering a source category containing numerous similar sources that meet the following criteria:

a. All sources in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Sources shall not be subject to case-by-case standards or requirements.

c. Sources shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Sources subject to a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General permits shall (i) identify the criteria by which sources may qualify for the general permit and (ii) describe the process to use in applying for the general permit.

4. The board shall not issue a general permit until the requirements concerning notice and opportunity for public participation under 9VAC5-80-270 and affected state and EPA review under 9VAC5-80-290 have been met. However, requirements concerning content of the notice shall replace those specified in 9VAC5-80-270 C and shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit.

b. The criteria to be used in determining which sources qualify for the general permit.

c. A brief description of the source category that the department believes qualifies for the general permit including, but not limited to, an estimate of the number of individual sources in the category.

d. A narrative statement of the estimated air quality impact contributed by the source category covered by the general permit including information

regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable.

e. A brief description of the application process to be used by sources to request coverage under the general permit.

f. A brief description of the comment procedures required by 9VAC5-80-270.

g. A brief description of the procedures to be used to request a hearing as required by 9VAC5-80-270 or the time and place of the public hearing if the board determines to hold a hearing under 9VAC5-80-270 E 9.

B. Application requirements for a general permit apply as follows.

1. Sources that would qualify for a general permit shall apply to the board for coverage under the terms of the general permit. Sources that do not qualify for a general permit shall apply for coverage under a permit issued under the other provisions of this article.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Sources that become subject to the general permit after it is issued to other sources in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall issue the general permit to the source if it determines that the source meets the criteria set out in the general permit.

C. Conditions of issuance of a general permit apply as follows.

1. The board shall grant the conditions and terms of the general permit to sources that meet the criteria set out in the general permit covering the specific source category.

2. The issuance of a permit to a source covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-270 and affected state and EPA review under 9VAC5-80-290.

3. A response to each general permit application may not be provided. The general permit may specify a reasonable time period after which a source that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Sources covered under a general permit may be issued a letter, a

certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the source is covered by the general permit.

5. Provided the letter, certificate, summary or other document is located at the source, the source may not be required to have a copy of the general permit. In this case, a copy of the general permit shall be retained by the board or at the source's corporate headquarters in the case of franchise operations.

D. Enforcement conditions apply as follows.

1. Regardless of the permit shield provisions in 9VAC5-80-140, the source shall be subject to enforcement action under 9VAC5-80-260 for operation without a permit issued under this article if the source is later determined by the board or the administrator not to qualify for the conditions and terms of the general permit.

2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.

9VAC5-80-130. Temporary sources.

A. The board may issue a single permit authorizing emissions from similar operations by the same owner at multiple temporary locations.

B. The operation shall be temporary and involve at least one change of location during the term of the permit.

C. Permits for temporary sources shall include the following:

1. Conditions that assure compliance with all applicable requirements at all authorized locations.

2. A condition that the owner shall notify the board not less than 15 days in advance of each change in location.

3. Conditions that ensure compliance with all other provisions of this article.

9VAC5-80-140. Permit shield.

A. The board shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the

permit.

2. Any other applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Nothing in this section or in any permit issued under this article shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.

2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.

3. The ability to obtain information from a source by the (i) administrator pursuant to § 114 of the federal Clean Air Act (inspections, monitoring, and entry); (ii) board pursuant to § 10.1-1314 or § 10.1-1315 of the Virginia Air Pollution Control Law or (iii) department pursuant to § 10.1-1307.3 of the Virginia Air Pollution Control Law.

9VAC5-80-150. Action on permit application.

A. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The board has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 9VAC5-80-120.

2. Except for modifications qualifying for minor permit modification procedures under 9VAC5-80-210 or 9VAC5-80-220, the board has complied with the requirements for public participation under 9VAC5-80-270.

3. The board has complied with the requirements for notifying and responding to affected states under 9VAC5-80-290.

4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Article 2 (9VAC5-80-310 et seq.) of this part, and the requirements of this article.

5. The administrator has received a copy of the proposed permit and any notices required under 9VAC5-80-290 A and B and has not objected to issuance of the permit under 9VAC5-80-290 C within the time period specified therein.

B. Except for permit revisions, as required by the provisions of 9VAC5-80-200, 9VAC5-80-210, 9VAC5-80-220 or 9VAC5-80-230, the board shall take final action on each permit application (including a request for permit modification or renewal) no later

than 18 months after a complete application is received by the board except in cases where a public hearing to provide the opportunity for interested persons to contest the application is granted pursuant to 9VAC5-80-35. The board will review any request made under 9VAC5-80-270 E 2, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

C. Issuance of permits under this article shall not take precedence over or interfere with the issuance of preconstruction permits under the new source review program.

D. The board shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The board shall send this statement to the administrator and to any other person who requests it.

E. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the board upon request.

9VAC5-80-160. Transfer of permits.

A. No person shall transfer a permit from one location to another, unless authorized under 9VAC5-80-130, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9VAC5-80-200.

C. In the case of a name change of a stationary source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change and shall comply with the requirements of 9VAC5-80-200.

9VAC5-80-170. Permit renewal and expiration.

A. Permits being renewed shall be subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this article.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with 9VAC5-80-80.

C. If the board fails to act in a timely way on a permit renewal, the administrator may invoke his authority under § 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

9VAC5-80-180. Permanent shutdown for emissions trading.

The shutdown of an emissions unit is not creditable for purposes of emissions trading or exempt under 9VAC5-80-50 C 4 unless a decision concerning shutdown has been made pursuant to 9VAC5-20-220.

9VAC5-80-190. Changes to permits.

A. Changes to emissions units that pertain to applicable federal requirements at a source with a permit issued under this article shall be made as specified under subsections B through D of this section and 9VAC5-80-200 through 9VAC5-80-240. Changes to emissions units that pertain to applicable state requirements at a source with a permit issued under this article shall be made as specified under subsection E of this section. Changes to a permit issued under this article and during its five-year term that pertain to applicable federal requirements may be initiated by the permittee as specified in subsection B of this section or by the board or administrator as specified in subsection C of this section.

B. The following requirements apply with respect to changes initiated by the permittee.

1. The permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in 9VAC5-80-200 through 9VAC5-80-230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The administrator or the board may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-240.

D. Changes to permits shall not be used to extend the term of the permit.

E. The following changes apply with respect to changes at a source and applicable state requirements.

1. Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9VAC5-80-200 through 9VAC5-80-240.

2. The permittee may initiate a change pertaining only to applicable state requirements (i) if the change does not violate applicable requirements and (ii) if applicable, the requirements of the new source review program have been met.

3. Incorporation of permit terms and conditions into a permit issued under this article shall be as follows.

a. Permit terms and conditions pertaining only to applicable state requirements and issued under the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

b. Permit terms and conditions for changes to emissions units pertaining only to applicable state requirements and exempt from the requirements of the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

4. The source shall provide contemporaneous written notice to the board of the change. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable state requirement that would apply as a result of the change.

5. The change shall not qualify for the permit shield under 9VAC5-80-140.

9VAC5-80-200. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.

4. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9VAC5-80-160 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under the new source review program when the new source review program meets (i) procedural requirements substantially equivalent to the requirements of 9VAC5-80-270 and 9VAC5-80-290 that would be applicable to the change if it were subject to review as a permit modification, and (ii) compliance requirements substantially equivalent to those contained in 9VAC5-80-110.

6. Change in the enforceability status from state-only requirements to federally enforceable requirements for provisions that have been approved through

rulemaking by the administrator to be a part of the implementation plan.

B. Administrative permit amendment procedures shall be required for and limited to the following.

1. The board shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public or affected states under 9VAC5-80-270 and 9VAC5-80-290. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The board shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The board shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield provisions of 9VAC5-80-140 for amendments made pursuant to subsection A 5 of this section.

9VAC5-80-210. Minor permit modifications.

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not Title I modifications; and

6. Are not required to be processed as a significant modification under 9VAC5-80-230 or as an administrative permit amendment under 9VAC5-80-200.

B. Notwithstanding subsection A of this section and 9VAC5-80-220 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in Regulations for the Control and Abatement of Air Pollution or a federally-approved program.

C. An application requesting the use of minor permit modification procedures shall meet the requirements of 9VAC5-80-90 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9VAC5-80-80 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. Within five working days of receipt of a permit modification application that meets the requirements of subsection C of this section, the board shall meet its obligation under 9VAC5-80-290 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The board shall promptly send any notice required under 9VAC5-80-290 B 2 to the administrator. The public participation requirements of 9VAC5-80-270 shall not extend to minor permit modifications.

E. The timetable for issuance of permit modifications shall be follows.

1. The board may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the board that he will not object to issuance of the permit modification, whichever occurs first, although the board can approve the permit modification prior to that time.

2. Within 90 days of receipt by the board of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under 9VAC5-80-290 C, whichever is later, the board shall do one of the following:

a. Issue the permit modification as proposed.

b. Deny the permit modification application.

c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.

d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by 9VAC5-80-290 A.

F. The following requirements apply with respect to the ability of an owner to make minor permit modification changes.

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.

2. After the change under subsection F 1 of this section is made, and until the board takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable federal requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subsection F 2 of this section, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. The permit shield under 9VAC5-80-140 shall not extend to minor permit modifications.

9VAC5-80-220. Group processing of minor permit modifications.

A. Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under 9VAC5-80-210 A.

2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in 9VAC5-80-60, or five tons per year, whichever is least.

B. An application requesting the use of group processing procedures shall meet the requirements of 9VAC5-80-90 for the proposed modifications and shall include all of

the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9VAC5-80-80 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subsection A 2 of this section.

5. Certification, consistent with 9VAC5-80-80 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the board to use to notify the administrator and affected states as required under 9VAC5-80-290.

C. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subsection A 2 of this section, whichever is earlier, the board promptly shall meet its obligation under 9VAC5-80-290 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The board shall send any notice required under 9VAC5-80-290 B 2 to the administrator. The public participation requirements of 9VAC5-80-270 shall not extend to group processing of minor permit modifications.

D. The provisions of 9VAC5-80-210 E shall apply to modifications eligible for group processing, except that the board shall take one of the actions specified in 9VAC5-80-210 E 2 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under 9VAC5-80-290 C, whichever is later.

E. The provisions of 9VAC5-80-210 F shall apply to modifications eligible for group processing.

F. The permit shield under 9VAC5-80-140 shall not extend to minor permit modifications.

9VAC5-80-230. Significant modification procedures.

A. Significant modification procedures shall be used for applications requesting

permit modifications that do not qualify as minor permit modifications under 9VAC5-80-210 or 9VAC5-80-220 or as administrative amendments under 9VAC5-80-200. Significant modification procedures shall be used for those permit modifications that:

1. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

2. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources), or a visibility or increment analysis carried out under this part.

3. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification.

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. An application for a significant permit modification shall meet the requirements of 9VAC5-80-80 and 9VAC5-80-90 for permit issuance and renewal for the modification proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Completed forms for the board to use to notify the administrator and affected states as required under 9VAC5-80-290.

C. The provisions of 9VAC5-80-290 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9VAC5-80-270 shall apply to applications made under this section.

E. The board shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. The owner shall not make the change applied for in the significant modification application until the modification is approved by the board under subsection E of this section.

G. The provisions of 9VAC5-80-140 shall apply to changes made under this section.

9VAC5-80-240. Reopening for cause.

A. A permit shall be reopened and revised under any of the conditions stated in 9VAC5-80-110 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

D. Provisions for reopenings for cause by EPA shall be as follows.

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the board and the permittee of such finding in writing.

2. The board shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the board must require the permittee to submit additional information.

3. The administrator shall review the proposed determination from the board within 90 days of receipt.

4. The board shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

5. If the board fails to submit a proposed determination pursuant to subsection D 2 of this section or fails to resolve any objection pursuant to subsection D 4 of this section, the administrator shall terminate, modify, or revoke and reissue the permit

after taking the following actions:

a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subsections D 1 through D 4 of this section.

b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

9VAC5-80-250. Malfunction.

A. In the event of a malfunction, the owner may demonstrate that the conditions of subsection B of this section are met.

B. The permittee may, through properly signed, contemporaneous operating logs, or other relevant evidence, 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 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 by any method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9VAC5-80-110 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.

9VAC5-80-260. Enforcement.

A. General provisions shall be as follows.

1. Pursuant to § 10.1-1322, failure to comply with any condition of a permit

shall be considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:

a. Knowingly makes material misstatements in the permit application or any amendments thereto.

b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this article.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation or termination contained in subsection A 2 of this section or for any other violations of Regulations for the Control and Abatement of Air Pollution.

B. Penalties shall be as follows.

1. An owner who violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.

2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

C. Provisions for appeals shall be as follows.

1. The board shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

2. Appeal from any decision of the board under subsection C 1 of this section may be taken pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5 Chapter 170, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.

D. The existence of a permit under this article shall constitute a defense to a violation of any applicable requirement if the permit contains a condition providing the

permit shield as specified in 9VAC5-80-140 and if the requirements of 9VAC5-80-140 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this article shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or Regulations for the Control and Abatement of Air Pollution and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. Provisions for inspections and right of entry shall be as follows.

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and 9VAC5-20-150, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this article.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the board or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the board shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. The board may enforce permits issued under this article through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9VAC5-20-20 and 9VAC5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

9VAC5-80-270. Public participation.

A. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30

days. The board shall notify the public using the procedures in subsection B of this section.

B. The board shall notify the public of the draft permit or draft permit modification (i) by advertisement in a newspaper of general circulation in the area where the source is located and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

C. Provisions for the content of the public notice and availability of information shall be as follows.

1. The notice shall include, but not be limited to, the following:

a. The source name, address and description of specific location.

b. The name and address of the permittee.

c. The name and address of the regional office processing the permit.

d. The activity or activities for which the permit action is sought.

e. The emissions change that would result from the permit issuance or modification.

f. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, and all relevant supporting materials, including the compliance plan.

g. A brief description of the comment procedures required by this section.

h. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the board determines to hold a hearing under subsection E 3 of this section.

2. Information on the permit application (exclusive of confidential information under 9VAC5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. The board shall provide such notice and opportunity for participation by affected states as is provided for by 9VAC5-80-290.

E. Provisions for public hearing shall be as follows.

1. The board shall provide an opportunity for a public hearing as described in subdivisions 2 through 6 of this subsection.

2. Following the initial publication of the notice required under subsection B of this section, the board will receive written requests for a public hearing to contest the draft permit or draft permit modification pursuant to the requirements of 9VAC5-80-35. In order to be considered, the request shall be submitted no later than the end of the comment period. Request for a public hearing shall contain the following information:

a. The name, mailing address, and telephone number of the requester.

b. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person).

c. The reason why a public hearing is requested.

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the draft permit or draft permit modification, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question.

e. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

3. The board will review any request made under subdivision 2 of this subsection, and will take final action on the request as provided in 9VAC5-80-150 B.

F. The board shall keep a record of the commenters and a record of the issues raised during the public participation process so that the administrator may fulfill the administrator's obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted. Such records shall be made available to the public upon request.

9VAC5-80-280. Operational flexibility.

A. The board shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term, or (ii) those that are not addressed or prohibited by

the permit. The conditions under which the board shall allow these changes to be made are specified in subsections B and C of this section, respectively.

B. The following requirements apply with respect to changes that contravene an express permit term.

1. The following general requirements apply.

a. The board shall allow a change at a stationary source that changes a permit condition with the exception of the following:

(1) A Title I modification.

(2) A change that would exceed the emissions allowable under the permit.

(3) A change that would violate applicable requirements.

(4) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), recordkeeping, reporting, compliance schedule dates, or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The owner, board and the administrator shall attach the notice described in subsection B 1 b of this section to their copy of the relevant permit.

d. The permit shield under 9VAC5-80-140 shall not extend to any change made pursuant to subdivision B 1 of this section.

2. The following requirements apply with respect to emission trades within permitted facilities provided for in Regulations for the Control and Abatement of Air Pollution.

a. With the exception of the changes listed in subsection B 1 a of this section, the board shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where Regulations for the Control and Abatement of Air Pollution provide for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator

and the board at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in Regulations for the Control and Abatement of Air Pollution authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of Regulations for the Control and Abatement of Air Pollution, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in Regulations for the Control and Abatement of Air Pollution and which provide for the emissions trade.

c. The permit shield described in 9VAC5-80-140 shall not extend to any change made under subsection B 2 of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of Regulations for the Control and Abatement of Air Pollution.

3. Emission trades within stationary sources to comply with an emissions cap in the permit.

a. If a permit applicant requests it, the board shall issue permits that contain terms and conditions, including all terms required under 9VAC5-80-110 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable federal requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The board shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The board shall not allow a change to be made under subsection B 3 of this section if it is a change listed in subsection B 1 of this section.

c. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under 9VAC5-80-140 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. The following requirements apply with respect to changes that are not addressed or prohibited by the permit.

1. The board shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are Title I modifications or are subject to requirements under Title IV.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition which is based on applicable federal requirements.

3. Sources shall provide contemporaneous written notice to the board and the administrator of each change, except for changes to emissions units deemed insignificant and listed in 9VAC5-80-720 A. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under 9VAC5-80-140.

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable federal requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

9VAC5-80-290. Permit review by EPA and affected states.

A. The following requirements apply with respect to transmission of information to the administrator.

1. The board shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this article.

2. The board shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. The following requirements apply with respect to review by affected states.

1. The board shall give notice of each draft permit to any affected state on or before the time that the board provides this notice to the public under 9VAC5-80-270, except to the extent that 9VAC5-80-210 or 9VAC5-80-220 requires the timing of the notice to be different.

2. The board, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under 9VAC5-80-210 or 9VAC5-80-220), shall notify the administrator and any affected state in writing of any refusal by the board to accept recommendations for the proposed permit that the affected state submitted during the

public or affected state review period. The notice shall include the reasons the board will not accept a recommendation. The board shall not be obligated to accept recommendations that are not based on applicable federal requirements or the requirements of this article.

C. The following requirements apply with regard to objections by EPA.

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subsection C 1 of this section shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.

3. Failure of the board to do any of the following also shall constitute grounds for an objection:

a. Comply with subsection A or B of this section or both.

b. Submit any information necessary to review adequately the proposed permit.

c. Process the permit under the public comment procedures in 9VAC5-80-270 except for minor permit modifications.

4. If, within 90 days after the date of an objection under subsection C 1 of this section, the board fails to revise and submit a proposed permit in response to the objection, the administrator will issue or deny the permit in accordance with the requirements of 40 CFR Part 71.

D. The following requirements apply with respect to public petitions to the administrator.

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 9VAC5-80-270, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

3. If the administrator objects to the permit as a result of a petition filed under subsection D 1 of this section, the board shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the board has issued a permit prior to receipt of an objection by the administrator under subsection D 1 of this section, the administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 9VAC5-80-240 D 4 or D 5 a and b except in unusual circumstances, and the board may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

E. No permit (including a permit renewal or modification) shall be issued by the board until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

9VAC5-80-300. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.

A. Upon the request of an applicant, any requirement of any regulation of the board (other than any requirement that is a federal applicable requirement) may be included as an applicable state requirement in a permit issued under this article.

B. If the applicant chooses to make a request under subsection A of this section, the provisions of this article pertaining to applicable state requirements shall apply.

C. The request under subsection A of this section shall be made by including the citation and description of any applicable requirement not defined as such in this article in the permit application submitted to the board under 9VAC5-80-90 E.

9VAC5-80-305. [Repealed.]

HISTORICAL NOTES:

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