

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 7.
Permits for New and Reconstructed Major Sources
of Hazardous Air Pollutants.

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9VAC5-80-1400. Applicability.

A. The provisions of this article apply to any owner or other person who constructs or reconstructs a major source of hazardous air pollutants.

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

C. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of

ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

D. No provision of this article shall be construed as exempting any stationary source, emissions unit, or affected source from the provisions of this chapter.

E. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources," or "new or reconstructed sources, or both" or "stationary sources" are applicable to the construction or reconstruction of all major sources of hazardous air pollutants.

2. Any emissions units, stationary sources, or air pollutants not subject to the provisions of this article may be subject to other provisions of the new source review program.

F. The provisions of this article do not apply to (i) electric utility steam generating units unless and until such time as these units are added to the source category list, (ii) research and development activities, (iii) affected sources, or (iv) stationary sources that are within a source category that has been deleted from the source category list.

9VAC5-80-1410. Definitions.

A. For the purpose of this article 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 section, all terms not defined here shall have the meaning given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Affected source" means the stationary source, the group of stationary sources, or the portion of a stationary source which is regulated by a MACT standard.

"Affected states" are all states:

1. Whose air quality may be affected and that are contiguous to the Commonwealth; or

2. Whose air quality may be affected and that are within 50 miles of the major source for which a case-by-case MACT determination is made in accordance with this article.

"Available information" means, for purposes of identifying control technology options for the stationary source, information contained in the following information sources

as of the date of approval of the permit:

1. A relevant proposed regulation, including all supporting information.
2. Background information documents for a draft or proposed regulation.
3. Data and information available from the Control Technology Center developed pursuant to § 113 of the federal Clean Air Act.
4. Data and information contained in the Aerometric Informational Retrieval System including information in the MACT database.
5. Any additional information that can be expeditiously provided by the Administrator.
6. For the purpose of determinations by the board, any additional information provided by the applicant or others, and any additional information considered available by the board.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Begin actual reconstruction" means initiation of permanent physical on-site reconstruction of an emissions unit. This includes, but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Best controlled similar source" means a stationary source that (i) has comparable emissions and is structurally similar in design and capacity to other stationary sources such that the stationary sources could be controlled using the same control technology, and (ii) uses a control technology that achieves the lowest emission rate among all other similar sources in the United States.

"Case-by-case MACT determination" means a determination by the board, pursuant to the requirements of this article, which establishes a MACT emission limitation, MACT work practice standard, or other MACT requirements for a stationary source subject to this article.

"Commenced," means, with respect to construction or reconstruction of a stationary source, that the owner has undertaken a continuous program of construction or reconstruction or that an owner has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construct a major source" means:

1. To fabricate, erect, or install a major source at any undeveloped site, or
2. To fabricate, erect, or install a major process or production unit at any site.

"Construction" means:

1. The fabrication, erection, or installation of a major source at any undeveloped site, or
2. The fabrication, erection, or installation of a major process or production unit at any site.

"Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including, but not limited to, measures that:

1. Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;
4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification); or
5. Are a combination of subdivisions 1 through 4 of this definition.

"Electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

"Emergency" means, in the context of 9VAC5-80-1580 C, a situation where

immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as sudden loss of power, fires, earthquakes, floods or similar occurrences.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any hazardous air pollutant.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

1. Are permanent.
2. Contain a legal obligation for the owner to adhere to the terms and conditions.
3. Do not allow a relaxation of a requirement of the state implementation plan.
4. Are technically accurate and quantifiable.
5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the emission standard) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9VAC5-80-1490 and other regulations of the board.
6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"EPA" means the United States Environmental Protection Agency.

"Federal operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of Part II of 9VAC5 Chapter 80.

"Federally enforceable" means all limitations and conditions which 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 State Implementation Plan (SIP) or a Federal Implementation Plan (FIP).

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51. This does not include limitations and conditions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting 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. This does not include limitations or conditions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

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

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

"Fixed capital cost" means the capital needed to provide all the depreciable components of an existing source.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

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

"MACT standard" means (i) an emission standard; (ii) an alternative emission standard; or (iii) an alternative emission limitation promulgated in 40 CFR Part 63 that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation. A MACT standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator establishes for new or existing sources to which such standard or limitation applies. Every MACT standard established pursuant to § 112 of the federal Clean Air Act includes subpart A of 40 CFR Part 63 and all applicable appendices of 40 CFR Part 63 or of other parts of Title 40 of the Code of Federal Regulations that are

referenced in that standard.

"Major process or production unit" means any process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

"Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, 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, unless the board establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

"Maximum achievable control technology (MACT) emission limitation" means the emission limitation which is not less stringent than the emission limitation achieved in practice by the best controlled similar source, and which reflects the maximum degree of reduction in emissions that the board, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

"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 regulations promulgated to implement the requirements of §§ 110 (a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Permit" means a document issued pursuant to this article containing all federally enforceable conditions necessary to enforce the application and operation of any maximum achievable control technology or other control technologies such that the MACT emission limitation is met.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a 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 only if the limitation or its effect on emissions is state and federally enforceable.

"Presumptive MACT" means a preliminary MACT determination made by EPA, in consultation with states and other stakeholders, after data on a source category's emissions and controls have been collected and analyzed, but before the MACT standard has been promulgated.

"Process or production unit" means any collection of structures or equipment or both, that processes, assembles, applies, or otherwise uses material inputs to produce

or store an intermediate or final product. A single facility may contain more than one process or production unit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information (exclusive of confidential information), the preliminary review and analysis, and the preliminary decision of the board regarding the permit application.

"Reconstruct a major source" means to replace components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new process or production unit; and

2. It is technically and economically feasible for the reconstructed major source to meet the applicable standard for new sources established in a permit.

"Reconstruction" means the replacement of components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new process or production unit; and

2. It is technologically and economically feasible for the reconstructed process or production unit to meet the applicable standard for new sources established in a permit.

"Research and development activities" means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner.

"Similar source" means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

"Source category list" means the list and schedule issued pursuant to § 112(c) and (e) for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 63 FR 7155, February 12, 1998.

"State enforceable" means all limitations and conditions which are enforceable as a practical matter, 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.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant.

"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollution control equipment is equipment that enables the source to conform to applicable air pollution control laws and regulations and that is not vital to its operation.

9VAC5-80-1420. General.

A. No owner or other person shall begin actual construction or reconstruction of any major source of hazardous air pollutants without first obtaining from the board a permit to construct and operate or to reconstruct and operate such source.

B. The board may combine the requirements of and the permits for emissions units within a stationary source subject to the new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the new source review program be combined into one application.

C. All provisions contained in the permit shall be federally enforceable upon the effective date of issuance of the permit, except for those provisions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

D. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or reconstruction in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

E. The MACT emission limitations and requirements established according to this article shall be effective as required by 9VAC5-80-1450 I, consistent with the principles established in subsection F of this section, and supported by the information listed in 9VAC5-80-1440. The owner shall comply with the requirements in 9VAC5-80-1450 J and 9VAC5-80-1490, and with all applicable requirements in subpart A of 40 CFR Part 63.

F. The following general principles shall govern preparation by the owner of each permit application or other application for stationary sources requiring a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the board:

1. The MACT emission limitation or MACT requirements recommended by the applicant and approved by the board shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the board.

2. Based upon available information, the MACT emission limitation and control technology (including any requirements under subdivision 3 of this subsection) recommended by the applicant and approved by the board shall achieve the maximum degree of reduction in emissions of hazardous air pollutants which can be achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements associated with the emission reduction.

3. The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof, and the board may approve such a standard if the board specifically determines that it is not feasible to prescribe or enforce an emission limitation. The phrase "not feasible" means any situation in which the board determines that:

a. A hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with the Regulations for the Control and Abatement of Air Pollution.

b. The application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

4. If the Administrator has either proposed a MACT emission standard or made a presumptive MACT determination for the source category which includes the constructed or reconstructed major source, the board shall consider the MACT emission limitations and requirements of the proposed standard or presumptive MACT determination in determining the MACT emission limitation applicable to the constructed or reconstructed major source.

G. The provisions of subsection F of this section shall not apply to new, major process or production units, provided the process or production unit satisfies the criteria in subdivisions 1 through 6 of this subsection:

1. All hazardous air pollutants emitted by the process or production unit that would otherwise be controlled under the requirements of this article will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

2. a. The board has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT) or lowest achievable emission rate (LAER), determined in accordance with 9VAC5-50-280 (BACT) or 9VAC5-50-270 (LAER), for the category of pollutants which includes those hazardous air pollutants to be emitted by the process or production unit; or

b. The board determines that the control of hazardous air pollutant emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);

3. The board determines that the percent control efficiency for emissions of hazardous air pollutants from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

4. The board has provided notice and an opportunity for public comment concerning its determination that criteria in subdivisions 1 through 3 of this subsection apply and concerning the continued adequacy of any prior BACT or LAER determination;

5. If any commenter has asserted that a prior BACT or LAER determination is no longer adequate, the board has determined that the level of control required by that prior determination remains adequate; and

6. Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the board are predicated will be construed by the board as applicable requirements under the federal operating permit program and either have been incorporated into any existing federal operating permit for the stationary source or will be incorporated into such permit upon issuance.

9VAC5-80-1430. Applications.

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures approved by the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted.

B. A separate application is required for each major source.

C. For projects with phased development, a single application should be submitted covering the entire project.

D. Any application form, report, or compliance certification submitted to the board shall comply with the provisions of 9VAC5-20-230.

9VAC5-80-1440. Application information required.

A. The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of new and reconstructed sources.

B. Each application for a permit shall include such information as may be required by the board to determine compliance with the MACT emission limitation established under this article. The information required shall include, but is not limited to, the following:

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 brief description of the major source, including a description of the source's processes and products (by Standard Industrial Classification Code), to be constructed or reconstructed and identification of any listed source category or categories in which it is included.

3. All emissions of hazardous air pollutants.

a. A permit application shall describe all emissions of hazardous air pollutants emitted from any emissions unit to be covered by the permit.

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.

4. The hazardous air pollutants emitted by the constructed or reconstructed major source, and the estimated emission rate for each such hazardous air pollutant. Emissions rates shall be expressed in tons per year and in such other terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source.

6. The controlled emissions for the constructed or reconstructed major source in tons per year at expected and maximum utilization of capacity.

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

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

9. Calculations on which the information in subsections B 3 through 8 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

10. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source.

11. The expected commencement date for the construction or reconstruction of the major source.

12. The expected completion date for construction or reconstruction of the major source.

13. The anticipated date of startup for the constructed or reconstructed major source.

14. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit.

C. In each instance where a stationary source would require additional control technology or a change in control technology to be in compliance with the MACT emission limitation established under this article, the application shall contain the following information:

1. Information described in subsection B of this section.

2. The control technology selected by the owner and compliance monitoring devices or activities that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in 9VAC5-80-1420 F.

3. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 9VAC5-80-1420 F.

4. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the board).

5. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health and environmental impacts or energy requirements for the selected control technology.

6. Any other relevant information required pursuant to subpart A of 40 CFR Part 63.

D. In each instance where the owner contends that a stationary source will be in compliance, upon startup, with the MACT emission limitation established under this article without a change in control technology, the application shall contain:

1. Information described in subsections B and C of this section; and

2. Documentation of the control technology in place.

E. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

9VAC5-80-1450. Action on permit application.

A. Within 45 days after receipt of an application, the board shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall include: (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the board shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the board received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met.

B. The board will normally process an application according to the steps specified in subdivisions 1 through 5 of this subsection. Processing time for these steps is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is needed.

1. Complete the application review and analysis in accordance with 9VAC5-80-1480 and the preliminary determination of the board;

2. Complete the emission limitation review (if any);

3. Complete the public participation requirements in 9VAC5-80-1460;

4. Consider the public comments received in accordance with 9VAC5-80-1460; and

5. Complete the final review and analysis and the final determination of the board.

C. At its discretion, the board may undertake the following steps prior to commencing with the public participation requirements of 9VAC5-80-1460:

1. The board shall initially approve the recommended emission limitation and other terms set forth in the application, or the board shall notify the owner in writing of its intent to disapprove the application, within 30 calendar days after the owner is notified in writing that the application is complete.

2. The owner may present, in writing, within 60 calendar days after receipt of notice of the board's intent to disapprove the application, additional information or arguments pertaining to, or amendments to, the application for consideration by the board before it decides whether to finally disapprove the application.

3. The board shall either initially approve or issue a final disapproval of the application within 90 days after it notifies the owner of an intent to disapprove or within 30 days after the date additional information is received from the owner, whichever is earlier.

D. The board will normally take final action on an application after completion of the steps in subsections B and C of this section except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-1460 G, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

E. The board shall notify the applicant in writing of its final decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9VAC5-80-1490.

F. A final decision by the board to disapprove any application shall be in writing and shall specify the grounds on which the disapproval is based. If any application is finally disapproved, the owner may submit a subsequent application concerning construction or reconstruction of the same major source, provided that the subsequent application has been amended in response to the stated grounds for the prior disapproval.

G. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

H. Within five days after notification to the applicant pursuant to subsection B of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9VAC5-80-1460 H 1.

I. The board shall send a copy of any final permit issued to a stationary source to the Administrator through the appropriate Regional Office, and to all other state and local air pollution control agencies having jurisdiction in affected states. Within 60 days of the issuance of the final permit, the board shall provide a copy of such permit to the Administrator, and shall provide a summary in a compatible electronic format for inclusion in the MACT database.

J. The effective date of a case-by-case MACT determination shall be the date the permit becomes final.

K. On and after the date of startup, a constructed or reconstructed major source which is subject to the requirements of this article shall be in compliance with all applicable requirements specified in the permit.

9VAC5-80-1460. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1450 A, the applicant for a permit for a major source of hazardous air pollutants shall notify the public of the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the board and shall include, but not be limited to, the following:

1. The source name, location, and type;
2. The applicable pollutants and the total quantity of each which the applicant estimates will be emitted, and a brief statement of the air quality impact of such pollutants;
3. The control technology proposed to be used at the time of the publication of the notice;
4. The date, time and place of the informational briefing; and
5. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board shall attend and provide information and answer questions on the permit application review process.

D. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the board, all permit applications shall be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing will be held with notice in accordance with subsection F of this section.

F. The board shall notify the public, by advertisement in at least one newspaper of general circulation in the area affected, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period.

1. Information on the permit application (exclusive of confidential information under 9VAC5-170-60), as well as the preliminary review and analysis and preliminary determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected area.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator.

3. Notices of public hearings published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

G. Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:

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

2. 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).

3. The reason why direct consideration by the board is requested.

4. 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 application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial or revision of the permit in question.

5. 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.

H. The board will review any request made under subsection G of this section, and will take final action on the request as provided in 9VAC5-80-1450 D.

I. In order to facilitate the efficient issuance of permits under Articles 1 and 3 of this chapter, upon request of the applicant the board shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

J. If appropriate, the board may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the board provides a public briefing, the requirements of subsection F of this section concerning public notification will be followed.

9VAC5-80-1470. Standards and conditions for granting permits.

A. No permit shall be granted pursuant to this article unless it is shown to the satisfaction of the board that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of the regulations of the board and that the following standards have been met:

1. The source shall be designed, built and equipped to comply with applicable emission standards and other requirements prescribed under 9VAC5 Chapter 60 (9VAC5-60-10 et seq.).

2. The source shall be designed, built and equipped to comply with the MACT emission limitation and other requirements prescribed in the permit.

3. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board.

B. Permits granted pursuant to this article shall:

1. Contain a MACT emission limitation (or a MACT work practice standard if the board determines it is not feasible to prescribe or enforce an emission limitation) to control the emissions of hazardous air pollutants which is determined by the board and conforms to the principles set forth in 9VAC5-80-1420 F.

2. Specify any notification, operation and maintenance, performance testing, monitoring, reporting and recordkeeping requirements.

3. Include the following:

a. In addition to the MACT emission limitation or MACT work practice standard established under this article, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation.

b. Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with the requirements of 9VAC5-80-110 K.

c. Monitoring capable of demonstrating continuous compliance during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for enforcing all applicable requirements established under this article, including emission limitations.

d. A statement requiring the owner to comply with all applicable requirements contained in this article.

C. Permits granted pursuant to this article shall contain emission standards as necessary to implement the provisions of this article. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emission levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.

3. Standards shall only include limitations that are determined by the board to be achievable through application of production processes or available methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, or substitution of less toxic or nontoxic materials.

4. 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 of them.

D. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. Limit on production rates with time frames as appropriate to support the emission standards.

b. Limit on raw material usage rate.

c. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

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

4. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

5. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:

- a. Pressure indicators and required pressure drop.
- b. Temperature indicators and required temperature.
- c. pH indicators and required pH.
- d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

9VAC5-80-1480. Application review and analysis.

A. No permit shall be granted pursuant to this article unless compliance with the standards in 9VAC5-80-1470 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis.

B. Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9VAC5-80-1470.

9VAC5-80-1490. Compliance determination and verification by performance testing.

A. An owner of a constructed or reconstructed major source shall comply with all requirements in the final permit issued pursuant to this article, including but not limited to any emission limitation or work practice standard, and any notification, operation and

maintenance, performance testing, monitoring, reporting, and recordkeeping requirements.

B. An owner of a constructed or reconstructed major source which has obtained a permit shall be deemed to be in compliance with the Virginia Air Pollution Control Law only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the permit issued pursuant to this article. Any violation of such requirements by the owner or any other person shall be deemed by the board to be a violation of the prohibition on construction or reconstruction in this article for whatever period the owner is determined to be in violation of such requirements, and shall subject the owner to appropriate enforcement action under the Virginia Air Pollution Control Law.

C. Compliance with emission standards shall be determined in accordance with the provisions of 9VAC5-60-20 and shall be verified by emission tests in accordance with the provisions of 9VAC5-60-30.

D. Testing required by this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the new or reconstructed source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

E. The requirements of subsections C and D of this section shall be met unless the board:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
2. Approves the use of an equivalent method;
3. Approves the use of an alternative method, the results of which the board has determined to be adequate for indicating whether a specific source is in compliance;
4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the board reasonably expects the new or reconstructed source to perform in compliance with applicable standards; or
5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the board's satisfaction that the source is in compliance with the applicable standard.

F. The provisions for the granting of waivers under subsection E of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the board to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

9VAC5-80-1500. Permit invalidation, rescission, revocation and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction or reconstruction is not commenced within the latest of the following time frames:

1. Eighteen months from the date the permit is granted;
2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any governmental entity; or
3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).

B. A permit granted pursuant to this article shall become invalid if a program of construction or reconstruction is discontinued for a period of 18 months or more, or if a program of construction or reconstruction is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section, by no more than 12 months, upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the board, such extensions may be granted without being subject to the requirements of 9VAC5-80-1460.

D. Any owner who constructs or operates a new or reconstructed source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or reconstructed source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the board may deem necessary to ensure compliance with all applicable requirements of the regulations.

F. The board may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;
2. Fails to comply with the terms or conditions of the permit;
3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Fails to comply with the applicable provisions of this article.

G. 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 contained in subsection F of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. A permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and may be grounds for (i) enforcement action or (ii) termination or revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in 9VAC5 Chapter 170, Part V (9VAC5-170-120 et seq.) and the Virginia Air Pollution Control Law.

J. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

K. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a permit is invalid or revoked prior to any final decision rendered under subsection J of this section.

L. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

9VAC5-80-1510. Existence of permit no defense.

The existence of a permit under this article shall not constitute defense to a violation of the Virginia Air Pollution Control Law or the regulations of the board 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.

9VAC5-80-1520. Compliance with local zoning requirements.

No provision of this part or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located.

9VAC5-80-1530. Transfer of permits.

A. No persons shall transfer a permit from one location to another, 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 abide by 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.

C. In the case of a name change of a stationary source, the owner shall abide by 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.

9VAC5-80-1540. Changes to permits.

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-1550 through 9VAC5-80-1580 of this article.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) of 9VAC5 Chapter 80, shall be made as specified in Article 1 (9VAC5-80-50 et seq) of 9VAC5 Chapter 80.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9VAC5-80-1550 through 9VAC5-80-1570.

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

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-1580.

9VAC5-80-1550. 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. 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 9VAC5-80-1420 have been fulfilled.

4. The combining of permits under the new source review program as provided in 9VAC5-80-1420 B.

B. The administrative permit amendment procedures are as follows:

1. The board will normally 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 under 9VAC5-80-1460. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

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

9VAC5-80-1560. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, 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;

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

a. An emissions cap assumed to avoid classification as a modification subject to the new source review program or § 112 of the federal Clean Air Act; and

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

5. Are not a result of modifications subject to the new source review program; and

6. Are not required to be processed as a significant amendment under 9VAC5-80-1570; or as an administrative permit amendment under 9VAC5-80-1550.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program. Minor permit amendment procedures may also be used to require more frequent monitoring or reporting by the permittee.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

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

2. A request that such procedures be used.

E. The public participation requirements of 9VAC5-80-1460 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board shall do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

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

G. The requirements for making changes are as follow:

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

2. After the change under subdivision G 1 of this section is made, and until

the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision G 2 of this section, the owner need not comply with the existing permit terms and conditions that the owner 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 that the owner seeks to modify may be enforced against the owner.

9VAC5-80-1570. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1560 or as administrative amendments under 9VAC5-80-1550.

2. Significant amendment procedures shall be used for those permit amendments that:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, 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.

b. Require or change a case-by-case determination of an emission limitation or other standard.

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

(1) An emissions cap assumed to avoid classification as a modification subject to the new source review program or § 112 of the federal Clean Air Act.

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

d. Result from modifications subject to the new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's

discretion, include a suggested draft permit amendment.

C. The provisions of 9VAC5-80-1460 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9VAC5-80-1580. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emission units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board 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 board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.

4. A new emission standard prescribed under 9VAC5 Chapter 60 (9VAC5-60-60 et seq.), becomes applicable after a permit is issued but prior to initial startup.

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.

9VAC5-80-1590. Requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirements.

A. If the Administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which would be deemed to be a constructed or reconstructed major source under this article before the date the owner has obtained a final and legally effective permit pursuant to this article, the owner shall comply with the

promulgated standard by the compliance date in the promulgated standard.

B. If the Administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which was deemed to be a constructed or reconstructed major source under this article and has been subject to a prior case-by-case MACT determination pursuant to this article, and the owner obtained a final and legally effective case-by-case MACT determination prior to the promulgation date of the MACT standard, the board shall (if the initial federal operating permit has not yet been issued) amend the permit issued pursuant to this article in accordance with the reopening procedures of 9VAC5-80-1580 to incorporate the emission standard, or shall (if the initial federal operating permit has been issued) revise the federal operating permit according to the reopening procedures in 9VAC5-80-240 to incorporate the MACT standard.

1. The MACT standard established pursuant to § 112(d) or § 112(h) of the federal Clean Air Act may specify a compliance date for those sources which have obtained a final and legally effective case-by-case MACT determination under this article. In that event, the board shall reopen the source's federal operating permit in accordance with the procedures in 9VAC5-80-240 to incorporate the applicable compliance date.

2. If no compliance date is specified in the MACT standard established pursuant to § 112(d) or § 112(h) of the federal Clean Air Act for those sources which have obtained a final and legally effective case-by-case MACT determination under this article, the board shall establish a compliance date that assures the owner will comply with a promulgated MACT standard as expeditiously as practicable, but no longer than 8 years after the standard is promulgated, and shall reopen the source's federal operating permit in accordance with procedures in 9VAC5-80-240 to incorporate that compliance date.

C. Notwithstanding the requirements of subsections A and B of this section, if the Administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which was deemed to be a constructed or reconstructed major source under this article and which is the subject of a prior case-by-case MACT determination pursuant to this article, and the level of control required by the MACT standard issued under § 112(d) or § 112(h) is less stringent than the level of control required by any emission limitation or standard in the prior case-by-case MACT determination, the board is not required to incorporate any less stringent terms of the promulgated standard in the source's federal operating permit and may, in its discretion, consider any more stringent provisions of the prior case-by-case MACT determination to be applicable legal requirements when issuing or revising the federal operating permit.

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