

**PUBLIC NOTICE**  
**VIRGINIA COASTAL MANAGEMENT PROGRAM**  
**AIR POLLUTION CONTROL LAW**  
**Clean Air Act Incorporation**

Pursuant to Section 307(f) of the Coastal Zone Management Act (CZMA), 16 U.S.C. §1456(f), and the Program Change Guidance issued in July 1996 by the Office of Ocean and Coastal Resource Management (OCRM) of the National Oceanic and Atmospheric Administration (NOAA), the Commonwealth of Virginia gives notice of incorporation of Virginia's currently applicable enforceable policies found in Title 10.1, Chapter 13 (State Air Pollution Control Board) of the Code of Virginia into the Virginia Coastal Management Program (CMP).

CZMA § 307(f) states that requirements established by a state or local government pursuant to the federal Clean Air Act (CAA) "shall be incorporated" into any program developed pursuant to the CZMA. In 1986, NOAA approved Virginia's Air Pollution Control Program as a part of Virginia's original Coastal Resource Management Program, including the Virginia Air Pollution Control Board's authority to "issue regulations covering air quality throughout Virginia as indicated in the Virginia Code §10-17.18." See Virginia Coastal Resources Management Program, Final Environmental Impact Statement p. III-16 (1985). At the time Virginia's CMP was approved, the Air Pollution Control Board was located in Va. Code § 10-17.1 *et seq.* In 1988, Title 10 was recodified to Va. Code 10.1-1300 *et seq.* The Commonwealth of Virginia now submits for incorporation into the State CMP the current provisions of Title 10.1, Chapter 13, established pursuant to the CAA.

These provisions address the Air Pollution Control Board's power and duties to promulgate air regulations and administer Virginia's State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. "The Department of Environmental Quality implements the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the national Ambient Air Quality Standards. The Program is administered by the State Air Pollution Control Board (Code of Virginia §10-1.1300)."<sup>1</sup>

The provisions being incorporated address the Board's authority to: 1) promulgate and enforce regulations governing air quality standards, 2) develop and implement programs designed to ensure that Virginia meets national air quality standards, 3) monitor Virginia's air quality, 4) investigate complaints and violations of Virginia's air quality laws, 5) establish and prescribe penalties, and 6) achieve and maintain air quality to protect human health, welfare, and safety. The provisions also address the powers and duties of the Board's Executive Director; the Board's meeting requirements; and the Air Pollution Permit Program Fund. For convenience, we summarize each provision in the following table.

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<sup>1</sup> Virginia Department of Environmental Quality, Virginia CZM Program Laws and Enforceable Policies, at <http://www.deq.state.va.us/coastal/lawspols.html>.

Title 10.1, Chapter 13	Summary
10.0-1300 Definitions	Defines terms used in the statute.
10.1-1301 State Air Pollution Control Board; membership; terms; vacancies	Requires that the Board be composed of 5 members, each of which is appointed by the Governor for four-year terms.
10.1-1302 Qualifications of members of the Board	Outlines the requisite qualifications of a Board member.
10.1-1303 Chairman of the Board; Executive Director; cooperation of state agencies	Requires the Board to elect a chairman and requires the Governor to elect an Executive Director of the Board.
10.1-1304 Meetings of Board; quorum	Requires the Board to meet at least one time every three months. The provision also requires three members for a quorum.
10.1-1305 Records of proceedings of Board	Requires the Board to keep a complete record of meeting proceedings. Records must be available for public inspection.
10.1-1306 Inspections, investigations, etc	Provides the Board authority to carry out investigations and inspections to achieve and maintain air quality levels in Virginia.
10.1-1307 Further powers and duties of Board	Provides the Board authority to regulate internal affairs; initiate and supervise research programs on the hazards of air pollution; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth. The provision also provides the Board authority to adopt by regulation emissions standards controlling the release of air pollutants from motor vehicles, as provided in §46.2-1176 <i>et seq.</i>
10.1-1307.01 Further duties of Board; localities particularly affected	Requires the Board, prior to promulgating a regulation, granting a variance, or issuing a permit for a new source or modification of an existing source, publish, or require the applicant to publish, a notice in the local paper, mail the notice to enumerated state, and accept comments for a prescribed period of time.
10.1-1307.1 Department continued; appointment of Director	Provides for the continuation of the Department of Air Pollution Control. Sets forth the Department's power and duties.
10.1-1307.2 Powers and duties of the Executive Director	Sets forth the Executive Director's powers.
10.1-1307.3 Executive Director to enforce laws	Provides the Executive Director the power to investigate Chapter 13 violations and pursue enforcement actions.

10.1-1308 Regulations	Provides the Board authority to promulgate regulations, including emergency regulations, to abate, control, and prohibit air pollution in Virginia. Prohibits regulations on specific actions.
10.1-1309 Issuance of special orders; civil penalties	Provides the Board power to issue special orders to polluters to discontinue actions contributing to air pollution. The Board may also issue special orders to permit violators. The provision also outlines the procedures the Board must follow to issue a fine and the fine limits.
10.1-1309.1 Special orders; penalties	Provides the Board with the authority to issue special orders in compliance with the Administrative Process Act.
10.1-1310 Decision of Board pursuant to hearing	Requires the Board to provide a record of all decisions rendered by the Board. The record must contain the explicit findings of fact and conclusions of law.
10.1-1310.1 Notification of local government	Requires the Board to notify the Chief Administrative Officer of a violation of this chapter or regulation promulgated under this chapter.
10.1-1311 Penalties for noncompliance; judicial review	Provides the Board authority to promulgate regulations that determine the penalty amounts for noncompliance.
10.1-1312 Air pollution control districts	Provides the Board authority to establish local air pollution control districts. The provision also sets forth the powers and authorities of each air pollution control district.
10.1-1313 State Advisory Board on Air Pollution	Provides the Board authority to name persons to the State Advisory Board on Air Pollution.
10.1-1314 Owners to furnish plans, specifications and information	Provides the Board authority to request plans, specifications, and information from air pollution source owners.
10.1-1314.1 Protection of trade secrets	Requires the Board to keep confidential all information, except emissions data, reported to them.
10.1-1315 Right of entry	Provides the Board with authority to enter any establishment to obtain information, conduct surveys, or conduct an investigation.
10.1-1316 Enforcement and civil penalties	Sets forth the Board's responsibilities to issue penalties and enumerates the penalty amounts.
10.1-1316.1 Severe ozone nonattainment areas; fees	Requires any owner of a stationary source that emits above the enumerated limit in a severe nonattainment area to pay a fee to the Department. Sets forth the criteria to assess the fee.
10.1-1317 Judicial review of regulations of Board	Establishes judicial review to determine

	regulation validity.
10.1-1318 Appeal from decision of Board	Describes how to appeal a decision of the Board.
10.1-1319 Appeal to Court of Appeals	Establishes appeal process.
10.1-1320 Penalties; chapter not to affect right to relief or to maintain action	Sets forth penalties for violations.
10.1-1320.1 Duty of attorney for the Commonwealth	Creates duty for every attorney who receives notification of a violation from the Director to prosecute the violation.
10.1-1321 Local ordinances	Mandates the Board's approval of any ordinance relating to air pollution.
10.1-1321.1 When application for permit considered complete	Sets forth criteria for permit application.
10.1-1322 Permits	Sets forth permit criteria, fees, and fee amount caps. The provision also requires the Board to take into account permit fees charged in other states when assessing permit amounts.
10.1-1322.1 Air Pollution Permit Program Fund established; use of moneys	Establishes an Air Pollution Permit Program Fund and sets forth protocol for the Fund.
10.1-1322.2 Preliminary program permit fees	Describes preliminary program fees, who should pay such fees, and how the fees should be used by the agency.
10.1-1322.3 Emissions trading programs; emissions credits; Board to promulgate regulations	Provides the Board authority to promulgate regulations to provide for emissions trading programs to achieve and maintain the National Ambient Air Quality Standards. The regulations shall create an air emissions banking and trading program for the Commonwealth.
10.1-1322.4 Permit modifications for alternative fuels or raw materials	Stipulates that the Board may not require additional permits or permit modifications for alternative fuels so long as the owner fulfills specified criteria.
10.1-1323 Small business stationary source technical and environmental compliance assistance program.	Creates a small business stationary source technical and environmental compliance assistance program. Sets forth eligibility criteria.
10.1-1324 Office of Small Business Ombudsman created	Creates Office of Small Business Ombudsman and details Ombudsman's role and duties.
10.1-1325 Small Business Environmental Compliance Advisory Panel created; membership; terms; compensation and expenses.	Establishes Small Business Environmental Compliance Advisory Panel. Sets forth membership terms, compensation and expenses.
10.1-1326 Duties of the Advisory Board	Details duties of Advisory Board.
10.1-1327 Definitions.	Defines 4 terms for the purpose of applying this statute.
10.1-1328 Emissions rates and limitations.	Requires Board to adopt regulations that comply with emissions established by the EPA in its Clean Air Interstate Rule.