

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 I

Permit Actions Before the Board

9VAC5-80-5	Definitions.
9VAC5-80-15	Applicability.
9VAC5-80-25.	Direct consideration of permit actions by the board.
9VAC5-80-35	Public hearings to contest permit actions.

9VAC5-80-5. Definitions.

A. For the purpose of applying this chapter in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the meaning given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units subject to this chapter (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):

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

2. Any term or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program. However, those terms or conditions designated as state-only enforceable shall not be applicable federal requirements.

3. Any emission standard, alternative emission standard, alternative emissions limitation, equivalent emissions limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in

1990.

4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

5. Any limitations and conditions or other requirement 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 of the federal Clean Air Act.

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

7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

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

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

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

11. 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 federal operating permit.

12. 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 (9VAC5-80-1605 et seq.) of Part II of this chapter.

13. Any standard or other requirement under § 126(a)(1) and (c) of the federal Clean Air Act.

"Board" means, for the purposes of this chapter, the Department of Environmental Quality. "Board" shall mean the State Air Pollution Control Board only for the purposes of granting direct consideration of permit actions as provided in 9VAC5-80-25 and granting requests for public hearings to contest permit actions as provided in 9VAC5-80-35.

"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 emissions limitations, and equivalent emissions 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 (unless expressly designated as state-only enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.

4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.

5. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.

6. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

a. The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.

b. The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

c. The operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."

d. The limitations, controls, and requirements in the permit in

question are permanent, quantifiable, and otherwise enforceable as a practical matter.

e. The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

7. Limitations and conditions in a regulation of the board or program that has been approved by 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 EPA has legal authority to create.

"Federal hazardous air pollutant new source review (NSR) program" means a program for the preconstruction review and approval of the construction, reconstruction or modification of any stationary source in accordance with regulations specified in subdivisions 1 through 3 of this definition and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act. Any permit issued under this program is a major NSR permit.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61.

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E.

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit.

"Federal hazardous air pollutant new source review (NSR) permit" means a permit issued under the federal hazardous air pollutant new source review program.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of Part II of this chapter.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II of this chapter.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110 (a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of Part II of this chapter. The minor NSR program may also be used to implement the terms and conditions designated as state-only enforceable; however, those terms and conditions shall not be applicable federal requirements.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 110 (a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations, and (iii) Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II of this chapter. The NSR program may also be used to implement the terms and conditions designated as state-only enforceable; however, those terms and conditions shall not be applicable federal requirements.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-2000 et seq.) of Part II of this chapter. Any permit issued under this program is a major NSR permit.

"Nonattainment major new source review (NSR) permit" means a permit issued under the nonattainment major new source review program.

"Permit action" means the activities associated with, and preliminary to, a

decision of the board to approve, approve with conditions, or disapprove permit applications; actions to amend or modify permit terms or conditions; actions to renew, reopen, invalidate, suspend, revoke or enforce permit terms or conditions. The term "permit action" does not include actions to combine permit terms and conditions, provided there are no changes to any permit term or condition.

"Prevention of Significant Deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of Part II of this chapter. Any permit issued under this program is a major NSR permit.

"Prevention of Significant Deterioration permit" means a permit issued under the Prevention of Significant Deterioration program.

"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) for a new stationary source or project, the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007 of the Administrative Process Act, held to afford people an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Public participation process" means any element of a board or department decision making process that provides an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"State operating permit" means a permit issued under the state operating permit program.

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

9VAC5-80-15. Applicability.

A. The provisions of this part, unless specified otherwise, shall apply to only permit actions subject to a public participation process.

B. The provisions of this part do not apply to the appeal of the promulgation of regulations or variances. Appeals of the promulgation of regulations and variances shall be pursued under § 10.1-1317 of the Virginia Air Pollution Control Law and § 2.2-4026 of the Administrative Process Act.

C. The provisions of this part do not apply to the appeal of case decisions and other actions or inactions of the board.

9VAC5-80-25. Direct consideration of permit actions by the board.

A. During the public hearing comment period on a permit action, interested persons may request that the board directly consider the permit action pursuant to the requirements of this section. The public participation process requirements for the permit programs subject to this section are specified in subdivisions 1 through 4 of this subsection.

1. 9VAC5-80-1170 for the minor new source review (minor NSR) program.

2. 9VAC5-80-1460 for the federal hazardous air pollutant new source review (NSR) program.

3. 9VAC5-80-1775 for the Prevention of Significant Deterioration (PSD) program.

4. 9VAC5-80-2070 for the nonattainment major new source review (NSR) program.

B. Requests for board consideration 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 board consideration 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, amendment, or revocation of the permit in question; and

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.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for board consideration filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant board consideration after the public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, amendment, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for board consideration;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, amendment, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the Virginia Air Pollution Control Law, federal law or any regulation promulgated thereunder.

D. Either the director or a majority of the board members, acting independently, may request a meeting of the board to be convened within 20 days of the director's decision pursuant to subsection C of this section in order to review such decision and determine by a majority vote of the board whether or not to grant board consideration, or to delegate the permit to the director for the director's decision. For purposes of this subsection, if a board meeting is held via electronic communication, the meeting shall be held in compliance with the provisions of § 2.2-3708 of the Virginia Freedom of Information Act, except that a quorum of the board is not required to be physically assembled at one primary or central meeting location. Discussions of the board held via such electronic communication means shall be specifically limited to a (i) review of the director's decision pursuant to subsection C, (ii) determination of the board whether or not to grant board consideration, or (iii) delegation of the permit to the director for the director's decision. No other matter of public business shall be discussed or transacted by the board during any such meeting held via electronic communication.

E. The director shall, forthwith, notify by mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny board consideration.

F. In addition to subsections C, D, and E, the director may, in his discretion, submit a permit action to the board for its consideration.

G. After the close of the public hearing comment period, the board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed

to by the permittee or applicant and the board or the director.

H. Persons who commented during the public comment period shall be afforded an opportunity at the board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the department for the board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the board.

I. In making its decision, the board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the board meeting, (iii) the comments and recommendation of the department, and (iv) the agency files. When the decision of the board is to adopt the recommendation of the department, the board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the board varies from the recommendation of the department, the board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the board. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC5-80-35. Public hearings to contest permit actions.

A. During the public comment period on a permit action, interested persons may request a public hearing on the permit action pursuant to the requirements of this section. The public participation process requirements for the permit programs subject to this section are specified in subdivisions 1 and 2 of this subsection.

1. 9VAC5-80-270 and 9VAC5-80-670 for the federal (Title V) operating permit program.

2. 9VAC5-80-1020 for the state operating permit program.

B. Requests for a public hearing 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 a public hearing 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, amendment, or revocation of the permit in question; and

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.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, amendment, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, amendment, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the Virginia Air Pollution Control Law, federal law or any regulation promulgated thereunder.

D. Either the director or a majority of the board members, acting independently, may request a meeting of the board to be convened within 20 days of the director's decision pursuant to subsection C in order to review such decision and determine by a majority vote of the board whether or not to grant a public hearing. For purposes of this subsection, if a board meeting is held via electronic communication, the meeting shall be held in compliance with the provisions of § 2.2-3708 of the Virginia Freedom of Information Act, except that a quorum of the board is not required to be physically assembled at one primary or central meeting location. Discussions of the board held via such electronic communication means shall be specifically limited to a (i) review of the director's decision pursuant to subsection C of this section, (ii) determination of the board whether or not to grant a public hearing, or (iii) delegation of the permit to the director for the director's decision. No other matter of public business shall be discussed or transacted by the board during any such meeting held via electronic communication.

E. The director shall, forthwith, notify by mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

F. In addition to subsections C, D, and E, the director may, in the director's discretion, convene a public hearing on a permit action.

G. If a determination is made to hold a public hearing, the director shall schedule the hearing at a time between 45 and 75 days after mailing of the notice required by subsection E.

H. The director shall cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

I. The director may, on the director's own motion or at the request of the applicant or permittee, for good cause shown, reschedule the date of the public hearing. In the event the director reschedules the date for the public hearing after notice has been published, the director shall, or require the applicant to, provide reasonable notice of the new date of the public hearing. Such notice shall be published once in the same newspaper where the original notice was published.

J. Public hearings held pursuant to these procedures may be conducted by (i) the board at a regular or special meeting of the board, or (ii) one or more members of the board. A member of the board shall preside over the public hearing.

K. The presiding board member shall have the authority to maintain order, preserve the impartiality of the decision process, and conclude the hearing process expeditiously. The presiding board member, in order to carry out his responsibilities under this subsection, is authorized to exercise the following powers, including but not limited to:

1. Prescribing the methods and procedures to be used in the presentation of factual data, arguments, and proof orally and in writing including the imposition of reasonable limitations on the time permitted for oral testimony;

2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive presentation of them;

3. Ruling on procedural matters; and

4. Acting as custodian of the record of the public hearing causing all notices and written submittals to be entered in it.

L. The public comment period will remain open for 15 days after the close of the public hearing if required by § 10.1-1307.01.

M. When the public hearing is conducted by less than a quorum of the board, the department shall, promptly after the close of the public hearing comment period, make

a report to the board.

N. After the close of the public hearing comment period, the board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the board or the director.

O. When the public hearing was conducted by less than a quorum of the board, persons who commented during the public comment period shall be afforded an opportunity at the board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the department for the board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the board.

P. In making its decision, the board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the board meeting, (iii) the comments and recommendation of the department, and (iv) the agency files. When the decision of the board is to adopt the recommendation of the department, the board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the board varies from the recommendation of the department, the board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the board. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

#### HISTORICAL NOTES:

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