

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 2
Permit Program Emissions Fees for Stationary Sources

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9VAC5-80-310. Applicability.

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

1. Any major source.

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

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

4. Any affected source.

5. Any other source subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

6. Any source that would be subject to the permit requirements of Article 1 (9VAC5-80-50 et seq.) of this part in the absence of a permit issued under Article 5 (9VAC5-80-800 et seq.) of this part.

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

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

1. All sources and source categories that would be subject to this article solely because they are subject to the provisions of 40 CFR Part 60, Subpart AAA (standards of performance for new residential wood heaters), as prescribed in Article 5 (9VAC5-50-400 et seq.) of 9VAC5-50 (New and Modified Stationary Sources).

2. All sources and source categories that would be subject to this article solely because they are subject to the provisions of 40 CFR 61.145 (national emission standard for hazardous air pollutants for asbestos, standard for demolition and renovation), Subpart M, as prescribed in Article 1 (9VAC5-60-60 et seq.) of 9VAC5-60 (Hazardous Air Pollutant Sources).

3. Any source issued a permit under the new source review program that began initial operation during the calendar year preceding the year in which the annual permit program emissions fee is assessed.

4. That portion of emissions in excess of 4,000 tons per year of any regulated air pollutant emitted by any source otherwise subject to an annual permit program emissions fee.

5. Any emissions unit within a stationary source subject to this article that is identified as being an insignificant activity in Article 4 (9VAC5-80-710 et seq.) of this part.

6. All sources and source categories that would be subject to this article solely because they are subject to regulations or requirements under § 112(r) of the federal Clean Air Act.

7. Any source deferred by the provisions of subsection D of this section provided the source is not part of a major source.

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

1. Area sources subject to this article under subdivision A 2 or A 3 of this section shall be deferred from the obligation to pay fees under this article except as follows.

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

b. In cases for which EPA has promulgated a standard under § 111 or 112 of the federal Clean Air Act after July 21, 1992, and has failed to declare whether the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

2. The following sources shall not be deferred from the obligation to pay fees under this article:

a. Major sources.

b. Solid waste incineration units subject to the provisions of 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources) as adopted pursuant to § 129 (e) of the federal Clean Air Act.

3. Any source deferred under subdivision 1 of this subsection may apply for a permit under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part. If the source applies for a permit, the source shall be subject to this article and shall pay fees accordingly.

9VAC5-80-320. Definitions.

A. For the purpose of applying this article 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. As used in this article, all words and terms not defined in subsection C of this section shall have the meanings given them in 9VAC5-80-5 or 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means, for the purposes of this article, the actual rate of emissions in tons per year of any regulated air pollutant (for fee calculation) emitted from a source subject to this article over the preceding calendar year. Actual emissions may be calculated according to any method acceptable to the department provided such calculation takes into account the source's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Any regulated pollutant which could be classed in more than one category shall be classed in only one category.

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

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

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

"Greenhouse gases" means, for the purposes of this article the aggregate group of the following gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

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

"Major source" means:

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

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

- (1) Coal cleaning plants (with thermal dryers);
- (2) Kraft pulp mills;
- (3) Portland cement plants;
- (4) Primary zinc smelters;
- (5) Iron and steel mills;
- (6) Primary aluminum ore reduction plants;
- (7) Primary copper smelters;
- (8) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (9) Hydrofluoric, sulfuric, or nitric acid plants;
- (10) Petroleum refineries;

- (11) Lime plants;
- (12) Phosphate rock processing plants;
- (13) Coke oven batteries;
- (14) Sulfur recovery plants;
- (15) Carbon black plants (furnace process);
- (16) Primary lead smelters;
- (17) Fuel conversion plant;
- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) Chemical process plants;
- (21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (23) Taconite ore processing plants;
- (24) Glass fiber processing plants;
- (25) Charcoal production plants;
- (26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
- (27) Any other stationary source category regulated under § 111 or 112 of the federal Clean Air Act for which the administrator has made an affirmative decision under § 302(j) of the federal Clean Air Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with

respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NO_x requirements for ozone nonattainment areas) do not apply.

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

"Permit program costs" means all reasonable (direct and indirect) costs required to develop, administer, and enforce the permit program; and to develop and administer the Small Business Technical and Environmental Compliance Assistance Program established pursuant to the provisions of § 10.1-1323 of the Code of Virginia.

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

"Regulated air pollutant" means any of the following:

- a. Nitrogen oxides or any volatile organic compound.
- b. Any pollutant for which an ambient air quality standard has been promulgated except carbon monoxide.
- c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.
- d. Any pollutant subject to a standard promulgated under § 112 (hazardous air pollutants) or other requirements established under § 112 of the federal Clean Air Act, particularly §§ 112(b), 112(d), 112(g)(2), 112(j), and 112(r); except that any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under § 112(r) of the federal Clean Air Act shall be exempt from this article.

"Regulated pollutant (for fee calculation)" means, for the purposes of this article, any regulated air pollutant except the following:

- a. Carbon monoxide;
- b. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance to a standard promulgated under or established by Title VI of the federal Clean Air Act;
- c. Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under § 112(r) of the federal Clean Air Act; or

d. Greenhouse gases.

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

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

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

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

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

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

9VAC5-80-330. General.

A. The owner of any source subject to this article shall pay an annual permit program emissions fee.

B. Permit program emissions fees collected pursuant to this article for sources subject to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall not be used for any purpose other than as provided in Title V of the federal Clean Air Act and associated regulations and policies.

C. The owner shall be exempt from paying the annual permit program emissions fee for any year during which the total actual emissions are less than 10 tons.

9VAC5-80-340. Annual permit program emissions fee calculation prior to January 1, 2018.

A. For annual permit program emissions fees due prior to January 1, 2018, the annual permit program emissions fee shall not exceed the base year amount of \$31.22 per ton of emissions, as provided in subsection B of Item 365 of the 2012 Appropriation Act adjusted annually by the Consumer Price Index as provided in Title V of the federal Clean Air Act and associated regulations and policies.

1. The annual permit program emissions fee shall be increased (consistent with the need to cover reasonable costs) each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the U.S. Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

2. The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

B. For annual permit program emissions fees due prior to January 1, 2018, the annual permit program emissions fee described in subsection A of this section and the amount billed to the owner as provided in subsection A of 9VAC5-80-350 for a given year shall be calculated in accordance with the following formulae:

$$B = (A)(F)$$
$$F = X(1 + \Delta\text{CPI})$$
$$\Delta\text{CPI} = \frac{\text{CPI} - 122.15}{122.15}$$

where:

B = the amount billed to the owner during the year after the year in which the actual emissions occurred, expressed in dollars

A = actual emissions covered by permit fees, expressed in tons

F = the maximum adjusted fee per ton for the calendar year in which the actual emissions occurred, expressed in dollars per ton

X = 31.22, expressed in dollars per ton

ΔCPI = the difference between the CPI and 122.15 (the average of the Consumer Price Index for all-urban consumers for the 12-month period ending on August 31, 1989)

CPI = the average of the Consumer Price Index for all-urban consumers for

the 12-month period ending on August 31 of the year in which the emissions actually occurred, expressed as a percentage

C. The actual emissions covered by the permit program emissions fees for the preceding year shall be calculated by the owner and submitted to the department by April 15 of each year. The calculations and final amount of emissions are subject to verification and final determination by the department.

D. If the assessment of the annual permit program emissions fee calculated in accordance with subsections A, B, and C of this section results in a total amount of fee revenue in excess of the amount necessary to fund the permit program costs, a lesser annual permit program emissions fee may instead be calculated and assessed according to the formula specified in subsection E of this section. Any adjustments made to the annual permit program emissions fee shall be within the constraints of 40 CFR 70.9.

E. The lesser annual permit program emissions fee shall be calculated according to the following formula: the lesser annual permit program emissions fee is equal to the estimated permit program costs divided by the estimated actual emissions. The estimated permit program costs and estimated actual emissions shall be determined from the data specified in subdivisions 1 and 2 of this subsection, incorporating any anticipated adjustments to the data.

1. The current permit program costs shall be determined from the most recent available annual expenditure record of the amount spent by the department on permit program costs.

2. The current actual emissions shall be determined from the most recent available annual emissions inventory of the actual emissions for each regulated pollutant subject to fees from all sources subject to the annual permit program emissions fee.

9VAC5-80-342. Annual permit program emissions fee calculation on and after January 1, 2018.

A. On and after (insert effective date of the regulation), the amount of the annual permit program emissions fee shall be calculated as follows:

1. The amount of the annual permit program emissions fee (consistent with the need to cover reasonable costs) for each applicable source shall be the annual permit program emission fee rate (in dollars per ton of emissions) for the billing calendar year multiplied by the total actual emissions for the previous calendar year (in tons per year of emissions).

2. The annual permit program emissions fee rate shall be calculated as follows:

a. For permit program emission fees billed in calendar year 2018

(applied to 2017 emissions), the annual permit program emissions fee rate shall be \$73.01 per ton of emissions.

b. For permit program emission fees billed in calendar year 2019 (applied to 2018 emissions), the annual permit program emissions fee rate shall be \$83.96 per ton of emissions.

c. For permit program emissions fees billed after calendar year 2019, the annual permit program emissions fee rate shall be adjusted annually by the change in the Consumer Price Index (CPI) as specified in subdivision 3 of this subsection.

3. The annual adjustment of the permit program emissions fees shall be based upon the annual permit program emissions fee rate for the preceding calendar year and the change in the CPI value published by the U.S. Department of Labor for all-urban consumers over the 12-month period ending on August 31 of the calendar year preceding the calendar year in which the annual permit program emissions fee is assessed and billed.

a. The CPI for all-urban consumers that is published by the U.S. Department of Labor may be obtained online from the Bureau of Labor Statistics website at <http://data.bls.gov/cgi-bin/surveymost?cu>.

b. No CPI adjustment shall be made for annual permit program emissions fees assessed and billed in calendar years 2018 and 2019.

B. The actual emissions covered by the permit program emissions fees for the preceding year shall be calculated by the owner and submitted to the department by April 15 of each year. The calculations and final amount of emissions are subject to verification and final determination by the department.

C. If the assessment of the annual permit program emissions fee calculated in accordance with subsections A and B of this section results in a total amount of fee revenue in excess of the amount necessary to fund the permit program costs, a lesser annual permit program emissions fee may instead be calculated and assessed according to the formula specified in subsection D of this section. Any adjustments made to the annual permit program emissions fee shall be within the constraints of 40 CFR 70.9.

D. The lesser annual permit program emissions fee shall be calculated according to the following formula: the lesser annual permit program emissions fee is equal to the estimated permit program costs divided by the estimated actual emissions. The estimated permit program costs and estimated actual emissions shall be determined from the data specified in subdivisions 1 and 2 of this subsection, incorporating any anticipated adjustments to the data.

1. The current permit program costs shall be determined from the most recent available annual expenditure record of the amount spent by the department on

permit program costs.

2. The current actual emissions shall be determined from the most recent available annual emissions inventory of the actual emissions for each regulated pollutant subject to fees from all sources subject to the annual permit program emissions fee.

9VAC5-80-350. Annual permit program emissions fee payment.

A. Upon determining that the owner owes an annual permit program emissions fee, the department shall mail a bill for the fee to that owner no later than August 1 unless the governor determines that fees are needed earlier for Virginia to maintain primacy over the program, as provided in § 10.1322 B of the Virginia Air Pollution Control Law.

B. Within 30 days following the date of the postmark on the bill, the owner shall respond in one of the following ways:

1. The owner may pay the fee in full.

2. The owner may pay the fee in equal quarterly payments and shall pay one quarter of the fee. The first payment shall be accompanied by a written statement that the second quarter of the fee shall be paid no later than December 1 of the year of the issuance of the bill, the third quarter of the fee shall be paid no later than March 1 of the year following the issuance of the bill, and the fourth quarter of the fee shall be paid no later than June 1 of the year following the issuance of the bill. If an owner fails to pay a quarterly payment by the deadline, the department may, in addition to other remedies available under the law, issue to the owner a notice of failure to pay. The notice will require payment of the entire remainder of the annual fee payment within 30 days of the date of the notice, or inform the owner that the owner is ineligible to opt for the quarterly payment schedule established in this subdivision until eligibility is reinstated by written notice from the department, or both.

3. The owner may request that the fee amount be revised if the owner can document that the emissions estimate on which the fee was based is in error. This request shall include appropriate source identification data, the revised emissions estimate, the revised fee amount, adequate supporting documentation, and other information as the department may require. The owner shall file the request with the appropriate regional office in a form acceptable to the department. If the department approves the request, the revised fee amount shall be paid in one of two ways:

a. In full within 30 days of the date of approval; or

b. In quarterly payments, with the first payment being paid within 30 days of the date of approval and the other payments being paid according to the schedule set out in subdivision 2 of this subsection.

C. The annual permit program emissions fee shall be paid by check, draft, or money

order made payable to the Treasurer of Virginia and mailed to the address specified by the department.

9VAC5-80-355. [Repealed].

HISTORICAL NOTES:

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