



COMMONWEALTH of VIRGINIA

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JUL 15 2013

Ms. Diana Esher, Director
Air Protection Division (3AP00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Reference: Minor New Source Review
Program, Revision H05

Dear Ms. Esher:

Pursuant to the requirements of § 110 of the Clean Air Act, we are officially requesting approval of a revision to the Commonwealth of Virginia State Implementation Plan approved and submitted under the authority of § 10.1-1185 of the Code of Virginia and in accordance with the requirements of 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

This revision consists of regulations to implement a new source review program requiring preconstruction review and permits for new and modified stationary sources that are not major stationary sources or major modifications locating in prevention of significant deterioration areas or nonattainment areas (minor new source review). The regulation amendments were adopted by the State Air Pollution Control Board on September 10, 2010 under the authority of § 10.1-1308 of the Code of Virginia and became effective on November 7, 2012.

Enclosed are the following:

1. Preamble: information as to provisions to be included or excluded from the SIP/copy of the minor new source review program regulation which indicates the changes made to the existing SIP-approved version of the minor new source review program regulation.

2. Certification of public participation activities and compliance with state administrative procedures; includes a true copy of the official regulation (Revision H05) which was published in the Virginia Register of Regulations on October 8, 2012 after being duly adopted by the State Air Pollution Control Board on September 10, 2010, certified by the Office of the Attorney General as within the Board's statutory authority on September 17, 2010 and thus fully enforceable under Virginia law, and submitted to the Virginia Registrar on behalf of the Board by the Department of Environmental Quality as a true and accurate copy of the duly adopted regulation on September 12, 2012.
3. Summary of public comment and response thereto.
4. Technical support document.
5. An electronic copy (CD) of the complete submittal. This electronic copy is an exact duplicate of the hard copy.

For purposes of this submittal, certain provisions are being included for information purposes only and are not to be construed as part of the Commonwealth of Virginia State Implementation Plan; these provisions are specifically identified in Enclosures 1 and 2 of this submittal.

If you have any questions or need additional information, please let us know.

Sincerely,



David K. Paylor

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Enclosures

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

**PREAMBLE TO
STATE IMPLEMENTATION PLAN SUBMITTAL
CONCERNING**

**MINOR NEW SOURCE REVIEW PROGRAM
(ARTICLE 6 OF 9VAC5 CHAPTER 80 AND
ARTICLE 4 OF 9VAC5 CHAPTER 50)**

CURRENT SITUATION

On March 29, 1993, the Commonwealth submitted a state implementation plan (SIP) revision to EPA concerning its minor new source review (MNSR) program (hereafter the 1993 submittal). On July 24, 1996 (61 FR 38388), EPA approved the submittal with some exceptions. EPA did not include in the SIP those provisions related to the implementation of the federal hazardous air pollutant new source review program (FHAPNSR) and specifically disapproved some provisions related to public participation. Provisions of state regulations that are not included in the SIP are not federally enforceable as provided in 40 CFR 52.23; all other provisions of the state regulations are federally enforceable.

NATURE OF THIS SUBMITTAL

Since the 1993 submittal (effective in the state on January 1, 1993), the Commonwealth has completed several substantive regulatory actions relative to its MNSR program. Each of the regulation revisions cited below was adopted by the State Air Pollution Control Board on the date indicated under the authority of § 10.1-1308 of the Code of Virginia and subsequently became effective on the date indicated. They are as follows:

- MNSR Reform (Revision YY: adopted May 21, 2002; effective September 1, 2002)
- Major NSR Reform (Revision E03: adopted June 21, 2006; effective September 1, 2006)
- Emissions Applicability Test (Revision J08: adopted October 23, 2008; effective December 31, 2008)
- Permit Actions before the Board (Revision G08: adopted October 23, 2008; effective December 31, 2008)
- Public Participation, Correction (Revision B09: adopted April 24, 2009; effective June 24, 2009)
- MNSR Simplification (Revision H05: adopted September 10, 2010; effective November 7, 2012).

None of these regulation revisions have been submitted to EPA as SIP revisions.

Of the above-cited regulatory actions, one of the more significant is Revision YY (hereafter 2002 MNSR program), which constituted a major revision to the minor NSR program and recodified the program as Article 6 of Part II of 9VAC5 Chapter 80. The evolution of 9VAC5-80-10 and 11 to Article 6 resulted in several major changes being made to the program enabling regulation. One of these changes was to convert from a permit applicability approach that looks at the sum of emissions increases from each individual emissions unit affected by a physical or operational change at an existing stationary source to determine permit applicability to an approach which looks at emissions increases and decreases from all of the changes from a source-wide perspective (i.e., “netting”) to determine permit applicability. The basis for the determination of applicability was changed to consider all of the emissions changes at the emissions units due to or directly resultant from the physical or operational change at the existing source. The emissions basis (the difference between the source's pre-change and postchange emissions) for permit applicability was also changed from uncontrolled emissions to actual emissions from all of the changes due to or directly resultant from the physical or operational changes.

While the netting concept, essential to determining applicability, works well in major NSR, it did not work in minor NSR, primarily due to the lack of an underlying permit program to make the netting operations enforceable.

Implementation of the 2002 MNSR program placed a significant burden upon the permitting authority. Under the 2002 MNSR program, determination of permit and BACT applicability could not be made with any reasonable degree of efficiency, effectiveness or consistency. Interpreting the 2002 MNSR program regulation was a major time-consuming workload for the permitting authority and regulated community. The preferred and simplest course of action was to eliminate the netting concept and return the regulation to an applicability and BACT determination structure similar to that currently in the EPA-approved SIP. The Commonwealth has completed the last of the above-cited regulatory actions (Revision H05), which accomplishes this objective.

The reminder of the above-cited regulatory actions were not promulgated to address the netting issue with the 2002 MNSR program, but were completed to make minor changes to bring the MNSR program in line with the major NSR programs and to respond to legislative mandates.

As explained above, the Commonwealth has completed several substantive regulatory actions relative to its currently SIP-approved MNSR program. In making this SIP submittal, the Commonwealth requests that these regulation revisions be processed as a group by EPA. Thus, a meaningful assessment of the impact of the changes to the SIP-approved MNSR program due to these regulation revisions cannot take place if one only considers each regulation revision independently. The purpose of the attached version of the MNSR program regulation is to illustrate the net result of the changes due to all of the revisions cited above when compared to the 1993 submittal that is the

current SIP-approved MNSR program. A proposed version of this version of the MNSR program regulation was available for viewing and comment during the public comment period for the last of the above-cited regulatory actions (Revision H05). The attached version of the MNSR program regulation is intended to meet the requirement found in Section 2.1 (d) of Appendix V to 40 CFR Part 51, which requires the SIP submittal to contain a copy of the regulation which includes indications of the changes made (such as, redline/strikethrough) to the existing approved plan, where applicable.

FEDERAL HAZARDOUS AIR POLLUTANT/STATE-ONLY ENFORCEABLE PROVISIONS

With regard to the federal hazardous air pollutant new source review program (FHAPNSR), the failure to include these provisions in the SIP has the effect of preventing the Commonwealth from having a legally enforceable vehicle to issue federally enforceable approvals (see list below) for federal hazardous air pollutants (HAPs), as it is currently obligated to do under the current delegation of authority relative to 40 CFR Part 61 and 40 CFR Part 63.

- 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.
- 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.
- 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.
- The provisions of 40 CFR 63.40 through 63.44 for issuing approvals to construct a new source or reconstruct a source listed in the source category schedule for standards and to construct a new major source or reconstruct a major source even if the source category is not listed in the source category schedule for standards.

With regard to the state-only enforceable provisions, EPA approval of the 1993 submittal had the result of making certain state-only regulatory requirements federally enforceable. This result was both unintended and contrary to the policy of the Commonwealth, as well as unnecessary to meet any federal requirement.

The Commonwealth requests that all permit terms and conditions (including those relating to federal HAPs) issued under its MNSR program be federally enforceable as provided in 40 CFR 52.23 except those identified as state-only enforceable. This request is reflected in 9VAC5-80-1120 F, which the Commonwealth requests be included in the SIP.

PUBLIC PARTICIPATION PROVISIONS

In taking action to approve the 1993 submittal, EPA specifically did not approve some provisions related to public participation.

EPA disapproved the public participation provisions of Virginia's MNSR program because the state regulations exempted major modifications of less than 100 tons per year from the public participation requirements of 40 CFR 51.161.

Because EPA found that certain public participation provisions in the 1993 submittal did not meet federal requirements, EPA retained as part of the SIP some public participation provisions from an older MNSR program regulation. Those provisions, cited as VR 120-08-01C.1.a., 01C.4.b., .01C.4.c., and .01C.4.d. (State effective date: February 1, 1985), are still federally-enforceable provisions of the Virginia SIP. A copy of these provisions may be found in the box below.

Section 120-08-01 PERMITS- NEW AND MODIFIED STATIONARY SOURCES

C. General

1. No owner or other person shall begin actual construction, reconstruction or modification of any of the following types of sources without first obtaining from the board a permit to construct and operate or to modify and operate such source:

- a. Any stationary source; or
- b. [not in the SIP]

4. Prior to a decision by the Board, permit applications as specified below shall be subject to a public comment of at least 30 days. In addition, at the end of the public comment period, a public hearing will be held:

- a. [not in the SIP]
- b. Applications for major stationary sources.
- c. Applications for stationary sources which have the potential for public interest, as determined by the Board. The identification of such sources shall be made using the following criteria:
 - (1) Whether the project is opposed by any person.
 - (2) Whether the project has resulted in adverse media comment.
 - (3) Whether the project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency.

(4) Whether the project has generated adverse comment by a local official, governing body, or advisory board.

d. Applications for stationary sources for which any provision of the permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by paragraphs 1 and 2 of the GEP definition. The demonstration specified in paragraph 3 of the GEP definition must be available during the public comment period.

The public participation provisions have been changed to make them at least as stringent as the current SIP-approved version of the MNSR program. (See 9VAC5-80-1170 D.) In addition, provisions have been added to require a public comment period for permit applications for any project that equals or exceeds the 100 tons per year threshold. (See 9VAC5-80-1170 D 3.)

The public participation provisions for major modifications have been revised to correct the deficiency noted in the Federal Register items relating to the current SIP-approved version of the MNSR program: September 12, 1995 (60 FR 47320) and July 24, 1996 (61 FR 38388). The provisions in question (9VAC5-80-10 G1 and G 4 b) are being revised to make them at least as stringent as the current SIP version (VR 120-08-01 C 1 a and C 4 b through d) as reflected in 40 CFR 52.2420. Specifically, by deleting the language in 9VAC5-80-10 G1 and G 4 b (recodified as 9VAC5-80-1170 A and D) relating to a net emissions increase of 100 tons per year of any single pollutant, the basis for disapproval of the prior revisions to these requirements, which were the subject of the above referenced federal rulemaking action, no longer exist.

Changing the regulation to reflect the current SIP will ensure that the permitting authority conducts public participation as provided in the current SIP. The addition of the provisions in 9VAC5-80-1170 D 3 will make the regulation more stringent than the current SIP. EPA approval of these changes will allow the Commonwealth to implement its MNSR program with public participation provisions that are more stringent than the current SIP.

PROVISIONS TO BE EXCLUDED FROM THE SIP

The Commonwealth is requesting that certain provisions of the new MNSR program (recodified as Article 6 of Part II of 9VAC5 Chapter 80) not be included in the SIP. Those provisions are as follows:

- The provisions related to state-only regulated air pollutants: 9VAC5-80-1105 E, subdivision 5 of the definition of regulated air pollutant, definition of toxic pollutant, 9VAC5-80-1180 A 1 (portions indicated), subdivision 2 of 9VAC5-80-1190, 9VAC5-80-1200 B.
- The provisions related to direct consideration of permit actions by the Board: 9VAC5-80-1160 D (portions indicated), 9VAC5-80-1170 F and G.

The attached version of the MNSR program regulation has a highlighting system, as explained below, to identify whether the provisions of the regulation are to be or not to be included in the SIP.

- Those existing provisions that are currently not in the SIP and the DEQ wants them to remain out of the SIP are highlighted in pink.
- Those existing provisions that are currently not in the SIP and the DEQ wants them to be in the SIP are highlighted in yellow.
- Those new provisions that the DEQ wants to be out of the SIP are highlighted in green.
- Those existing provisions that are currently in the SIP and the DEQ wants them to be out of the SIP are highlighted in orange.

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REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5 CHAPTER 80)

9VAC5 CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

PART I.

~~Permits for New and Modified Sources~~ Permit Actions and Public Hearings Before the Board.

PART II.

~~Operating Permits~~ Permit Procedures.

ARTICLE 6.

Permits for New and Modified Stationary Sources.

~~9VAC5-80-10. Permits - new and modified stationary sources.~~

~~9VAC5-80-1100.~~ A. Applicability.

~~A.——1. Except as provided in subdivision A-3 subsection C of this section, the provisions of this section article apply to the construction, reconstruction, relocation or modification of any stationary source (i) the construction of any new stationary source or any project (which includes any addition or replacement of an emissions unit, any modification to an emissions unit or any combination of these changes), and (ii) the reduction of any stack outlet elevation at any stationary source.~~

~~B.——2. The provisions of this section article apply throughout the Commonwealth of Virginia.~~

~~C.——3. The Except as provided in subdivision 3 of this subsection, the provisions of this section article do not apply to any facility exempted by 9VAC5-80-11 stationary source, emissions unit or facility that is exempt under the provisions of 9VAC5-80-1105.~~

~~1. Exemption from the requirement to obtain a minor NSR permit under this section shall not relieve any owner of the responsibility to comply with any other applicable provisions of these regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.~~

~~2. Any facility stationary source, emissions unit or facility which is exempt from the provisions of this section article based on the criteria in 9VAC5-80-11 9VAC5-80-1105 but which exceeds the applicability thresholds for any applicable emission standard in 9VAC5 Chapter 40 (9VAC5-40-10 et seq.) 9VAC5-40 (Existing Stationary Sources) if it were an existing source or any applicable standard of performance in 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) 9VAC5-50 (New and Modified Stationary Sources) shall be subject to the more restrictive of the provisions of either the emission standard in 9VAC5 Chapter 40 (9VAC5-40-10 et seq.) 9VAC5-40 (Existing Stationary Sources) or the~~

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standard of performance in ~~9VAC5 Chapter 50 (9VAC5-50-10 et seq.)~~ 9VAC5-50 (New and Modified Stationary Sources).

3. Any new stationary source or project that would be subject to the provisions of this article except for being exempt based on one or more of the criteria in 9VAC5-80-1105 may opt to be subject to this article notwithstanding the exemptions in 9VAC5-80-1105. The provisions of this article shall apply to the new stationary source or project as if the applicable exemption criteria did not apply. Opting in to the minor NSR program shall not affect the applicability of such exemptions to any subsequent project.

~~4. Where a source is constructed or modified in contemporaneous increments which individually are not subject to approval under this section and which are not part of a program of construction or modification in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of this section. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.~~

D. Except as provided in 9VAC5-80-1105 C 3 and D 3, fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article.

E. Where construction of a new stationary source or a project is accomplished in contemporaneous increments that individually are not subject to approval under this article and that are not part of a program of construction of a new stationary source or project in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of any particular change under the provisions of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before commencing construction on the particular change and the date that the emissions increase from the particular change occurs.

F. 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 stationary source which, except for the pattern of ownership or development, would otherwise require a minor NSR permit.

G. No provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article.

H. — 5. Unless specified otherwise, the provisions of this section ~~article~~ are

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applicable to various sources as follows:

1.——a. Provisions referring to "sources;" "new or modified sources, or both" or "stationary sources" are applicable to the construction, relocation, replacement, reconstruction or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of Article 8 (9VAC5-80-1700 et seq.) of this chapter or 9VAC5-80-30 the major new source review program.

2.——b. Provisions referring to "major stationary sources" are applicable to the construction, relocation, or reconstruction replacement or modification of all major stationary sources subject to this article. Provisions referring to "major modifications" are applicable to major modifications of major stationary sources subject to this article.

3.——c. In cases where the provisions of Article 8 (9VAC5-80-1700 et seq.) of this chapter or 9VAC5-80-30 the major new source review program conflict with those of this section article, the provisions of Article 8 (9VAC5-80-1700 et seq.) of this chapter or 9VAC5-80-30 the major new source review program shall prevail.

4. Provisions referring to "state and federally enforceable" or "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a minor NSR permit designated state-only enforceable under 9VAC5-80-1120 F.

I. For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and the applicable article of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources). Implementation of the federal hazardous air pollutant new source review program shall be independent of applicability and exemption criteria of this article. Additional details may be found in subdivisions 1, 2 and 3 of this subsection. Minor NSR permits shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9VAC5-80-1150 and 9VAC5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR

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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. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

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. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

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. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources). Any information regarding how minor NSR permits are to be issued to a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program under the provisions of this article may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. The provisions of 40 CFR 63.40 through 40 CFR 63.44 for issuing approvals to construct a new source or reconstruct a source listed in the source category schedule for standards and to construct a new major source or reconstruct a major source even if the source category is not listed in the source category schedule for standards. These provisions of the federal hazardous air pollutant new source review program shall not be implemented through this article but shall be implemented through Article 7 (9VAC5-80-1400 et seq.) of this part.

J. Unless otherwise approved by the board or prescribed in the regulations of the board, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-1160 B prior to November 7, 2012. Any minor NSR permit applications that have not been determined to be complete as of November 7, 2012 shall be subject to the new provisions of this article.

K. The provisions of 40 CFR Parts 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources) and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

L. The provisions of 40 CFR Parts 51, 58, 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

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M. Particulate matter (PM_{2.5}) emissions and particulate matter (PM₁₀) emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in minor NSR permits. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section.

9VAC5-80-1110. B. Definitions.

A.—1. For the purpose of these regulations applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board related uses, the words or terms shall have the meaning meanings given them in subdivision B-3 subsection C of this section.

B.—2. As used in this section article, all terms not defined here herein shall have the meaning meanings given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.) 9VAC5-10 (General Definitions), unless otherwise required by context.

C.—3. Terms defined.

"Addition" means the construction of a new emissions unit at or the relocation of an existing emissions unit to a stationary source.

"Affected emissions units" means the following emissions units, as applicable:

1. For a new stationary source, all emissions units.
2. For a project, the added, modified, and replacement emissions units that are part of the project.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

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

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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 pursuant to 9VAC5-80-1120 F or 9VAC5-80-820 G 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

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seq.) of this part.

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

"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. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location or relocation of a portable ~~facility~~ emissions unit, this term refers to the delivery of any portion of the portable ~~facility~~ emissions unit to the site.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained or coated.

"Commence," as applied to the construction, ~~reconstruction or modification~~ of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1.——(1) Begun, or caused to begin, a continuous program of actual on-site construction, ~~reconstruction or modification~~ of the unit, to be completed within a reasonable time; or

2.——(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction, ~~reconstruction or modification~~ of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that 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.

"Construction" means fabrication, erection, installation, demolition, relocation, addition, replacement or ~~installation~~ modification of an emissions unit that would result in a change in the uncontrolled emission rate.

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“Construction waste” means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to lumber, wire, sheetrock, broken brick, shingles, glass, pipe, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not construction wastes.

“Debris waste” means wastes resulting from land clearing operations. Debris wastes include, but are not limited to stumps, wood, brush, leaves, soil, and road spoils.

“Demolition waste” means that solid waste that is produced by the destruction of structures, or their foundations, or both, and includes the same materials as construction wastes.

“Diesel engine” means, for the purposes of 9VAC5-80-1105 A 1 b, any internal combustion engine that burns diesel or #2 fuel oil to provide power to processing equipment for a vegetative waste recycling/mulching operation.

“Emergency” means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner or operator of a facility including:

1. A failure of the electrical grid,
2. On-site disaster or equipment failure,
3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions, or
4. An ISO-declared emergency, where an ISO emergency is:
 - a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property,
 - b. Capacity deficiency or capacity excess conditions,
 - c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel,

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d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state, or

e. An abnormal event external to the ISO service territory that may require ISO action.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions limitation" means a requirement established by the board that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique.

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

"Enforceable as a practical matter" means that the permit contains emissions 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 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 implementation plan) 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 this article and other regulations of the board; and
6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Existing stationary source" means any stationary source other than a new

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stationary source.

"Federal hazardous air pollutant new source review 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 below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

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.

"Federally enforceable" means all limitations and conditions which ~~that~~ are enforceable by the administrator, ~~including those requirements developed pursuant to 40 CFR 60, 61 and 63, requirements within the State Implementation Plan, and any permit requirements established pursuant to 40 CFR 52.21 or this chapter, including operating permits issued under an EPA-approved program that is incorporated into the State Implementation Plan and expressly requires adherence to any permit issued under such program~~ 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.

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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 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

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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 this part.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

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

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-1250.

"Hazardous air pollutant" means (i) any air pollutant listed in §112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63, and (ii) incorporated by reference into the regulations of the board at 9VAC5-60-92 B.

"Independent system operator" or "ISO" means a person that may receive or has received, by transfer pursuant to § 56-576 of the Code of Virginia, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Major modification" means any modification defined as such in 9VAC5-80-20 or 9VAC5-80-30, as may apply project at a major stationary source that would result in a significant emissions increase in any regulated air pollutant. For projects, the emissions increase may take into consideration any state and federally enforceable permit conditions that will be placed in a permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

"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 this part.

"Major stationary source" means any stationary source which that emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant. For new stationary sources, the potential to emit may take into consideration any state and federally enforceable permit conditions that will be placed in a permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

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"Minor new source review (NSR) permit" means a permit issued pursuant to this article.

"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 this article. The minor NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"Modification" means any physical change in, or change in the method of operation of, ~~or addition to,~~ an emissions unit ~~which that~~ increases the uncontrolled emission rate of any regulated air pollutant emitted into the atmosphere by the unit or ~~which that~~ results in the emission of any regulated air pollutant into the atmosphere not previously emitted, ~~except that the.~~ The following shall not, by themselves (unless previously limited by permit conditions), be considered modifications physical changes or changes in the method of operation under this definition:

1.——(1) Maintenance, repair and replacement which of components that the board determines to be routine for a source type and which does not fall within the definition of "reconstruction replacement";

2.——(2) An increase in the throughput or production rate of a unit (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter), if that increase does not exceed the operating design capacity of that unit;

3.——(3) An increase in the hours of operation (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter);

4.——(4) Use of an alternative fuel or raw material (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter) if, prior to the date any provision of these regulations the regulations of the board becomes applicable to the source type, the source emissions unit was designed to accommodate that alternative use. A source unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications; or

5. Use of an alternative fuel or raw material that the emissions unit is approved to use under any new source review permit;

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6.——(5) The addition, replacement or use of any system or device whose primary function is the reduction of air pollutants, except when an emission control a system or device that is removed or necessary to comply with applicable air pollution control laws, permit conditions or regulations is replaced by a system or device which the board considers to be less efficient in the control of air pollution emissions; or

7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not (i) necessary for the source to comply with any applicable air pollution control laws, permit conditions or regulations or (ii) used to avoid any applicable new source review program requirement.

8. A change in ownership at a stationary source.

~~"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.~~

~~"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are the NSR program that is part of the State Implementation Plan implementation plan.~~

~~"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.~~

"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) codified in this article, Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part. The NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"New stationary source" means any stationary source to be constructed at or relocated to an undeveloped site.

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"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

2. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers).

An internal combustion engine is not a nonroad engine if the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act.

"Plantwide applicability limitation (PAL)" means an emissions limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865 or 9VAC5-80-2144.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle. Indications of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

"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. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Precursor pollutant" means the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone.

(2) Sulfur dioxide is a precursor to PM_{2.5}.

(3) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5}, unless the board determines that emissions of nitrogen oxides from sources in a

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specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(4) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5}, unless the board determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

"Process operation" means any method, form, action, operation or treatment of manufacturing or processing, including any storage or handling of materials or products before, during or after manufacturing or processing.

"Project" means any change at an existing stationary source consisting of the addition, replacement, or modification of one or more emissions units.

"Public comment period" means a time during which the public shall have the opportunity to comment on the ~~new or modified source~~ 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.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" ~~(4)~~ means, for the sole purposes of 9VAC5-80-1210 A, B, and C, the replacement of an emissions unit or its components to such an extent that:

1.——(a) The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit, ~~and;~~

2. The replacement significantly extends the life of the emissions unit; and

3.——(b) It is technologically and economically feasible to meet the applicable emission standards prescribed under ~~these regulations~~ of the board.

~~——(2)~~ Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

1.——(a) The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;

2.——(b) The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;

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3.—(e) The extent to which the components being replaced cause or contribute to the emissions from the unit; and

4.—(d) Any economic or technical limitations on compliance with applicable standards of performance ~~which~~ that are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.

2. Any pollutant (including any associated precursor pollutant) for which an ambient air quality standard has been promulgated.

3. Any pollutant subject to any standard promulgated under 40 CFR Part 60.

4. Any pollutant subject to a standard promulgated under or other requirements established under 40 CFR Part 61 and any pollutant regulated under 40 CFR Part 63.

5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Replacement" means the substitution of an emissions unit for an emissions unit located at a stationary source, which will thereafter perform the same function as the replaced emissions unit.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, ~~reconstruction, modification~~ or operation of a new stationary source or an emissions unit, but do not come from the stationary source itself. For the purpose of this ~~section~~ article, secondary emissions must be specific, well-defined, and quantifiable; and must ~~impact upon~~ affect the same general areas as the stationary source ~~which that~~ causes the secondary emissions. Secondary emissions include emissions from any off site support facility ~~which that~~ would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source or emissions unit. Secondary emissions do not include any emissions ~~which that~~ come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

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1. In reference to an emissions increase, an increase in potential to emit that would equal or exceed any of the following rates:

a. In ozone nonattainment areas classified as serious or severe in 9VAC5-20-204:

<u>Pollutant</u>	<u>Emissions Rate</u>
<u>Carbon Monoxide</u>	<u>100 tons per year (tpy)</u>
<u>Nitrogen Oxides</u>	<u>25 tpy</u>
<u>Sulfur Dioxide</u>	<u>40 tpy</u>
<u>Particulate Matter (PM)</u>	<u>25 tpy</u>
<u>Particulate Matter (PM₁₀)</u>	<u>15 tpy</u>
<u>Particulate Matter (PM_{2.5})</u>	<u>10 tpy</u>
<u>Volatile organic compounds</u>	<u>25 tpy</u>
<u>Lead</u>	<u>0.6 tpy</u>

b. In all other areas:

<u>Pollutant</u>	<u>Emissions Rate</u>
<u>Carbon Monoxide</u>	<u>100 tons per year (tpy)</u>
<u>Nitrogen Oxides</u>	<u>40 tpy</u>
<u>Sulfur Dioxide</u>	<u>40 tpy</u>
<u>Particulate Matter (PM)</u>	<u>25 tpy</u>
<u>Particulate Matter (PM₁₀)</u>	<u>15 tpy</u>
<u>Particulate Matter (PM_{2.5})</u>	<u>10 tpy</u>
<u>Volatile organic compounds</u>	<u>40 tpy</u>
<u>Lead</u>	<u>0.6 tpy</u>

2. In reference to an emissions increase for a regulated air pollutant not listed in subdivision 1 of this definition, there is no emissions rate that shall be considered significant.

3. If the particulate matter (PM₁₀ or PM_{2.5}) emissions for a stationary source or emissions unit can be determined in a manner acceptable to the board and the emissions increase is determined to be significant using the emission rate for particulate

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matter (PM₁₀ or PM_{2.5}), the stationary source or emissions unit shall be considered to be significant for particulate matter (PM). If the emissions of particulate matter (PM₁₀ or PM_{2.5}) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine whether the emissions increase is significant.

“Significant emissions increase” means, for a regulated air pollutant, an increase in emissions that is significant for that pollutant.

“Site” means one or more contiguous or adjacent properties under the control of the same person (or persons under common control).

“Source category schedule for standards” means the schedule (i) issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and (ii) incorporated by reference into the regulations of the board in subdivision 2 of 9VAC5-60-92.

“Space heater” means any fixed or portable, liquid, or gaseous fuel-fired, combustion unit used to heat air in a space, or used to heat air entering a space, for the purpose of maintaining an air temperature suitable for comfort, storage or equipment operation. Space heaters do not include combustion units used primarily for the purpose of conditioning or processing raw materials or product, such as driers, kilns, or ovens.

"State enforceable" means all limitations and conditions ~~which that~~ are enforceable ~~by the board~~ as a practical matter, including any regulation of the board, those requirements developed pursuant to ~~9VAC5-20-110~~ 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"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 this part.

"Stationary source" means any building, structure, facility or installation ~~which that~~ emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities ~~which that~~ belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any ~~vessel watercraft or any nonroad engine~~. Pollutant-emitting activities shall be considered as part

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of the same industrial grouping if they belong to the same "major group" (i.e., ~~which that~~ have the same two-digit code) as described in the "Standard Industrial Classification Manual," ~~as amended by the supplement~~ (see 9VAC5-20-21).

"Synthetic minor source" means a stationary source that otherwise has the potential to emit regulated air pollutants in amounts that are at or above those for major stationary sources, as applicable, but is subject to restrictions such that its potential to emit is less than such amounts for major stationary sources. Such restrictions must be enforceable as a practical matter. The term "synthetic minor source" applies independently for each regulated air pollutant that the source has the potential to emit.

"Temporary facility" means a facility that (i) is operated to achieve a specific objective (such as serving as a pilot test facility, a process feasibility project, or a remediation project) and (ii) does not contribute toward the commercial production of any product or service (including byproduct and intermediate product) during the operational period. Portable emissions units covered by the exemption under 9VAC5-80-1105 A 1 c and facilities used to augment or enable routine production are not considered temporary facilities for the purposes of this definition.

"Toxic pollutant" means any air pollutant (i) listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63 and (ii) incorporated by reference into the regulations of the board at 9VAC5-60-92 subdivision 1, or any other air pollutant that the board determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®.

"Uncontrolled emission rate" means the emission rate from ~~a source~~ an emissions unit when operating at maximum capacity without air pollution control equipment. ~~Air pollutant pollution control~~ equipment includes control equipment which that is not vital to its operation, except that its use enables the ~~source~~ owner to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,670 hours of operation per year) of the ~~source~~ emissions unit, unless the emissions unit or stationary source is subject to state and federally enforceable permit conditions ~~which that~~ limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted, stored, or processed may be used in determining the uncontrolled emission rate of a an emissions unit or stationary source. The uncontrolled emission rate of a stationary source is the sum of the uncontrolled emission rates of the individual emissions units. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

"Undeveloped site" means any site or facility at which no emissions units are located at the time the permit application is deemed complete, or at the time the owner begins actual construction, whichever occurs first. An undeveloped site also

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includes any site or facility at which all of the emissions units have been determined to be shut down pursuant to the provisions of 9VAC5-20-220.

"Vegetative waste" means decomposable materials generated by land clearing activities and includes shrub, bush and tree prunings, bark, brush, leaves, limbs, roots, and stumps. Vegetative waste does not include construction or demolition waste or any combination of them.

"Vegetative waste recycling/mulching operation" means any activity related to size reduction or separating, or both, of clean wood or vegetative waste, or both, by grinding, shredding, chipping, screening, or any combination of them.

9VAC5-80-1120. G. General.

A.——1. No owner or other person shall begin actual construction, reconstruction or modification of, or operate, any of the following types of sources new stationary source or any project subject to this article without first obtaining from the board a permit to construct and operate or to modify and operate such source under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit:.

a. Any stationary source; or

b. Any stationary source of hazardous air pollutants to which an emission standard prescribed under 9VAC5 Chapter 60 (9VAC5-60-10 et seq.) became applicable prior to the beginning of construction, reconstruction or modification. In the event that a new emission standard prescribed under 9VAC5 Chapter 60 (9VAC5-60-10 et seq.) becomes applicable after a permit is issued but prior to initial startup, a new permit must be obtained by the owner.

B.——2. Except as provided in 9VAC5-80-1105 A 1 c, no owner or other person shall relocate any stationary source or emissions unit subject to the provisions of 9VAC5-20-160 from one stationary source to another without first obtaining from the board a minor NSR permit to relocate the stationary source or unit.

C.——3. Except as provided in 9VAC5-80-1105 A 2 b, no owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any regulated air pollutant from an affected facility emissions unit subject to the provisions of 9VAC5-20-160 without first obtaining a minor NSR permit from the board.

D.——4. The board may combine the requirements of and the permits for emissions units within a stationary source subject to 9VAC5-80-10, Article 8 (9VAC5-80-1700 et seq.) of this chapter, and 9VAC5-80-30 into one permit. Likewise the board may require that applications for permits for emissions units within a stationary

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~~source required by 9VAC5-80-10, Article 8 (9VAC5-80-1700 et seq.) of this chapter, and 9VAC5-80-30 be combined into one application. The board will take actions to combine permit terms and conditions as provided in 9VAC5-80-1255. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-1260 as explained in subsection E of this section.~~

E. The board will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1260. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection D of this section.

F. All terms and conditions of any minor NSR permit shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any minor NSR permit shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources), or Article 4 (9VAC5-60-200 et seq.) or Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any minor NSR permit that is not federally enforceable shall be marked in the permit as state-only enforceable and shall be enforceable only by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

G. Nothing in the regulations of the board shall be construed to prevent the board from granting minor NSR permits for programs of construction of a new stationary source or project in planned incremental phases. In such cases, all uncontrolled emission rate increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9VAC5-80-1130. Reserved.

9VAC5-80-1140. D. Applications.

A.—1. A single application is required identifying at a minimum each emissions

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~~point within the emissions unit subject to this section in the new stationary source or the project, or affected by the stack outlet elevation reduction. The application shall be submitted according to procedures approved by acceptable to the board. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.~~

B. A separate application is required for each new stationary source or project.

C.—2. For new stationary sources or for projects with phased development, a single application should be submitted covering the entire new stationary source or project.

D.—3. Any application, form, report, or compliance certification submitted to the board shall be signed by a responsible official. A responsible official is defined as follows: comply with the provisions of 9VAC5-20-230.

~~a. For a business entity, such as a corporation, association or cooperative, a responsible official is either:~~

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

~~(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity.~~

~~b. For a partnership or sole proprietorship, a responsible official is a general partner or the proprietor, respectively.~~

~~c. For a municipality, state, federal, or other public agency, a responsible official is either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency.~~

~~4. Any person signing a document under subdivision D 3 above shall make the following certification:~~

~~"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to~~

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~~assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."~~

~~5. As required under § 10.1-1321.1 of the Virginia Air Pollution Control Law, applications shall not be deemed complete unless the applicant has provided a notice from the locality in which the source is located or is to be located that the site and operation of the source are consistent with all local ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.~~

E. Any application submitted pursuant to this article shall contain a certification signed by the applicant as follows:

"I certify that I understand that the existence of a minor new source review permit does not shield the source from potential enforcement of any regulation of the board governing the major new source review program and does not relieve the source of the responsibility to comply with any applicable provision of the major new source review program regulations."

9VAC5-80-1150. E. Application information required.

A. The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of stationary sources and emissions units subject to this article.

B.——1. Each application for a minor NSR permit shall include such information as may be required by the board to determine the effect of the proposed new stationary source or emissions unit on the ambient air quality and to determine compliance with the any emission standards which are applicable. The information required shall include, but is not limited to, the following:

~~a. That specified on applicable permit forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations. Completion of these forms serves as initial registration of new and modified sources; and~~

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

2. A description of the source's processes and products (by Standard

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Industrial Classification Code).

3. All emissions of regulated air pollutants.

a. A minor NSR permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit or group of emissions units in the new stationary source or project or affected by the stack outlet elevation reduction. The permit application shall include a description of all changes in uncontrolled emissions from the project.

b. Emissions shall be calculated as required in the minor NSR permit application form or instructions or in a manner acceptable to the board.

c. Fugitive emissions shall be included in the minor NSR permit application to the extent quantifiable.

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

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

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

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

8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9.——b. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the new stationary source or the project, or the stack outlet elevation reduction, including the submission of measured air quality data at the proposed site prior to construction, ~~reconstruction or modification~~. Such measurements shall be accomplished using procedures acceptable to the board.

C.——2. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the board.

9VAC5-80-1160. F. Action on permit application.

A. Prior to submitting an application for processing under subsections B through F

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of this section, the owner may request a nonbinding applicability determination as to which particular provisions of the new source review program are applicable. The request for the applicability determination shall include sufficient information as may be necessary for the board to make an applicability determination and may include the same information required for an application. Within 30 days after receipt of a request, the board will (i) notify the applicant of the applicability determination or (ii) provide a determination that the information provided by the owner is insufficient to make an applicability determination, along with the identification of any deficiencies.

B.—1. Within 30 days after receipt of an application, the board shall will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall will be provided by the board in writing and shall will include (i) a determination as to which provisions of this chapter 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 will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subdivision F 2 subsection C of this section shall be the date on which the board received all required information, including any applicable permit fees, and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

C.—2. The board will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for a permit these steps is normally 90 days following receipt of a complete application. Processing steps normally are as follows If a public hearing is required, processing time is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is needed.

1.—a. Completion of Complete the preliminary review and analysis in accordance with subsection I of this section 9VAC5-80-1190 and the preliminary decision determination of the board. This step may constitute the final step if the provisions of subsection G of this section 9VAC5-80-1170 concerning public participation are not applicable;_

2.—b. When required, completion of complete the public participation requirements in subsection G of this section; and accordance with 9VAC5-80-1170.

3. Consider the public comments received in accordance with 9VAC5-80-1170.

4.—c. Completion of Complete the final review and analysis and the final

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~~decision~~ determination of the board.

D.—~~3.~~ The board will normally ~~will~~ take final action on all applications an application after completion of the ~~review and analysis, or expiration of the public comment period (and consideration of comments from that)~~ when required, ~~unless more information is needed~~ applicable steps in subsection 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 9VAC5-80-1170 F, 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 decision on the application, including its reasons, and shall also specify the applicable emission ~~limitations~~ standards. These emission ~~limitations~~ standards are applicable during any emission testing conducted in accordance with ~~subsection J of this section~~ 9VAC5-80-1200.

F.—~~4.~~ The applicant may appeal the decision pursuant to ~~9VAC5-20-90 Part VIII (9VAC5-170-190 et seq.)~~ of 9VAC5-170 (Regulation for General Administration).

G.—~~5.~~ Within ~~5~~ five days after notification to the applicant pursuant to ~~subdivision F 3~~ subsection E 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 ~~subdivision G 5 a of this section~~ 9VAC5-80-1170 E 1.

9VAC5-80-1170. G. Public participation.

A.—~~1.~~ No later than 15 days after receiving the initial determination notification required under ~~subdivision F 1 of this section~~ 9VAC5-80-1160 B, the applicant for a minor NSR permit for a new major stationary source or a major modification with a net emissions increase of 100 tons per year of any single pollutant shall notify the public of the proposed major stationary source as required in accordance with subdivision G 2 subsection B of this section.

B.—~~2.~~ The public notice required ~~under this~~ by subsection A of 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.—~~a.~~ The source name, location, and type;
- 2.—~~b.~~ The 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;

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3.—~~e.~~ The control technology proposed to be used at the time of the publication of the notice; and

4.—~~d.~~ The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

C.—3. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a minor NSR permit may implement an alternative plan for notifying the public ~~as to that~~ required in ~~subdivision G-2~~ subsections A and B of this section.

D.—4. Prior to the decision of the board, minor NSR permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with ~~subdivision G-5~~ subsection E of this section.

1.—~~a.~~ Applications for stationary sources of hazardous air pollutants ~~as specified in subdivision C 1 b of this section~~ requiring a case-by-case maximum achievable control technology determination under Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2.—~~b.~~ Applications for new major stationary sources and major modifications with a net emissions increase of 100 tons per year of any single pollutant.

3. Applications for projects that would result in an increase in the potential to emit of any regulated air pollutant that would equal or exceed 100 tons per year, considering any state and federally enforceable permit conditions that will be placed on the source by a minor NSR permit.

4.—~~e.~~ Applications for new stationary sources or projects that have the potential for public interest concerning air quality issues, as determined by the board. The identification of such sources shall be made using the following nonexclusive criteria:

a.—~~(1)~~ Whether the new stationary source or project is opposed by any person;

b.—~~(2)~~ Whether the new stationary source or project has resulted in adverse media;

c.—~~(3)~~ Whether the new stationary source or project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and

d.—~~(4)~~ Whether the new stationary source or project has

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generated adverse comment by a local official, governing body or advisory board.

5.—d. Applications for stationary sources for which any provision of the minor NSR permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by subdivisions 1 and 2 of the GEP definition. The demonstration specified in subdivision 3 of the GEP definition ~~must be available during the public comment period~~ and required by 9VAC5-50-20 H 3 shall be included in the application.

E.—5. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision ~~G 5 a 1~~ of this section subsection. The notification shall be published at least 30 days prior to the day of the public hearing. For permits subject to § 10.1-1307.01 of the Code of Virginia, 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.—a. Information on the minor NSR permit application (exclusive of confidential information under ~~9VAC5-20-150~~ 9VAC5-170-60), as well as the preliminary review and analysis and preliminary ~~decision~~ determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region. Any demonstration included in an application specified in subdivision D 5 of this section shall be available for public inspection during the public comment period.

2.—b. A copy of the notice shall be sent to all local air pollution control agencies having ~~State Implementation Plan responsibilities~~ jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

F. Following the initial publication of the notice required under subsection E of this section, the board will receive written requests for direct consideration of the minor NSR permit 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.

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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.

G. The board will review any request made under subsection F of this section, and will take final action on the request as provided in 9VAC5-80-1160 D.

H. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the board shall process the minor NSR permit application using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

9VAC5-80-1180. H. Standards and conditions for granting permits.

A. No minor NSR permit will be granted pursuant to this section 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 these regulations and that comply with the following standards have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) 9VAC5-50 (New and Modified Stationary Sources) and with emission standards prescribed under 9VAC5 Chapter 60 (9VAC5-60-10 et seq.) 9VAC5-60 (Hazardous Air Pollutant Sources);

2. For sources subject to the federal hazardous air pollutant new source review program, the source shall be designed, built, and equipped to comply with the applicable emission standard and other requirements prescribed in 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), as applicable;

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~~2 3.~~ The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and

~~3 4. Stack evaluation reductions under 9VAC5-80-10 C 3.~~ The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.

B. Minor NSR permits may contain emission caps provided the caps are made enforceable as a practical matter using the elements set forth in subsection D of this section. The emission caps may be considered in determining whether a stationary source is a synthetic minor source.

C. Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include limits on 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. The standard may prescribe, as an alternative to or a supplement to a limit prescribed under subdivision 1 of this subsection, equipment, work practice, fuels specification, process materials, maintenance, or operational standards, or any combination of them.

D. Minor NSR permits will contain, but need 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. Limits on fuel sulfur content.

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b. Limits on production rates with time frames as appropriate to support the emission standards.

c. Limits on raw material usage rate.

d. 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. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

4. Specifications for air pollution control equipment installed or to be installed. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but need 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. Performance 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

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applicable regulations.

9VAC5-80-1190. I. Application review and analysis.

No minor NSR permit shall be granted pursuant to this section unless compliance with the standards in subsection H of this section 9VAC5-80-1180 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Stationary sources. Applications for new stationary sources and projects shall be subject to the following review and analysis:

a. ~~Applications for stationary sources shall be subject to~~ A control technology review to determine if such the source emissions units will be designed, built and equipped to comply with all applicable standards of performance prescribed under ~~9VAC5 Chapter 50 (9VAC5-50-10 et seq.)~~ 9VAC5-50 (New and Modified Stationary Sources).

b. ~~Applications shall be subject to~~ An air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.

2. Stationary sources of hazardous air pollutants. Applications for stationary sources of hazardous toxic air pollutants shall be subject to a control technology review to determine if such the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9VAC5 Chapter 60 (9VAC5-60-10 et seq.) 9VAC5-60 (Hazardous Air Pollutant Sources).

3. Stack elevation reductions under 9VAC5-80-10 C 3. Applications under 9VAC5-80-10 9VAC5-80-1120 C 3 (concerning stack outlet elevation reduction) shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions as may be deemed appropriate by the board.

4. Applications for sources subject to the federal hazardous air pollutant new source review program shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

9VAC5-80-1200. J. Compliance determination and verification by performance testing.

A.—1. For stationary sources other than those specified in ~~subdivision 2 subsection B of this subsection section~~, compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.

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~~B.~~—2. For stationary sources of ~~hazardous air~~ toxic pollutants, 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~~.

~~C.~~—3. Testing required by ~~subdivisions J 1 and 2~~ subsections A and B of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the ~~new or modified~~ 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~~ one or, upon request, more copies of a written report of the results of the tests.

~~D.~~—4. For sources subject to the provisions of ~~Rule 5-5, or 6-1~~ 40 CFR Part 60, 61 or 63, the compliance determination and performance test requirements of ~~subdivisions J 1 through 3~~ subsections A, B and C of this section shall be met ~~in all cases as specified in those parts of Title 40 of the Code of Federal Regulations.~~

~~E.~~—5. For sources other than those specified in ~~subdivision J 4~~ subsection D of this section, the requirements of ~~subdivisions J 1 through 3~~ subsections A, B and C of this section shall be met unless the board:

~~1.~~—~~a.~~ Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

~~2.~~—~~b.~~ Approves the use of an equivalent method;

~~3.~~—~~c.~~ 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.~~—~~d.~~ 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 modified~~ source to perform in compliance with applicable standards; or

~~5.~~—~~e.~~ 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.

~~E.~~—6. The provisions for the granting of waivers under ~~subdivision J 5~~ subsection E of this section are intended for use in determining the initial compliance status of a source, ~~and the~~. The granting of a waiver does not obligate the board to ~~do so~~ grant any waivers once the source has been in operation for

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more than one year beyond the initial startup date.

G. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirement of the implementation plan, or any other applicable federal requirement promulgated under the federal Clean Air Act.

9VAC5-80-1210. K. Permit invalidation, suspension, revocation and enforcement.

A. In addition to the sources subject to this article, the provisions of this section shall apply to sources specified below:

1. Any stationary source (or portion of it), the construction, modification or relocation of which commenced on or after March 17, 1972.

2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

~~B.——1. A minor NSR permit granted pursuant to this section shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within the latest of the following time frames:~~

~~a. Eighteen months from the date the minor NSR permit is granted;~~

~~b. Nine months from the date of the issuance of the last permit or other authorization (other than minor NSR permits granted pursuant to this section) from any governmental entity; or~~

~~c. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including minor NSR permits granted pursuant to this section).~~

C.——2. A minor NSR permit granted pursuant to this section shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a the phased construction of a new stationary source or project; each phase must commence construction within 18 months of the projected and approved commencement date.

D.——3. The board may extend the periods prescribed in ~~subdivisions K 1 and 2~~ subsections B and C of this section 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

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~~without being subject to the requirements of subsection G of this section using the procedures for minor amendments in 9VAC5-80-1280.~~

~~E.~~—4. Any owner who constructs or operates a ~~new or modified~~ source subject to this section not in accordance (i) ~~with the application submitted pursuant to this section~~ or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a ~~new or modified~~ source subject to this section who commences construction or operation without ~~applying for and~~ receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this ~~subsection~~ section.

~~F.~~—5. ~~Permits issued under this section~~ Minor NSR permits 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 of the board.

~~G.~~—6. The board may revoke any minor NSR permit if the permittee:

1.—a. Knowingly makes material misstatements in the permit application or any amendments to it;

2.—b. Fails to comply with the terms or conditions of the permit;

3.—c. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4.—d. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or ~~emission~~ emissions limitations, in the ~~State Implementation Plan~~ implementation plan in effect at the time that an application is submitted; or

5.—e. Fails to comply with the applicable provisions of this ~~section~~ article.

~~H.~~—7. The board may suspend, under such conditions and for such period of time as the board may prescribe, any minor NSR permit for any of the grounds for revocation contained in subsection ~~K-6~~ G of this section or for any other violations of ~~these regulations~~ the regulations of the board.

I. The permittee shall comply with all terms and conditions of the minor NSR permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation.

~~J.~~—8. Violation of ~~these regulations~~ the regulations of the board shall be

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grounds for revocation of minor NSR permits ~~issued under this section~~ and are subject to the civil charges, penalties and all other relief contained in ~~Part II of these regulations~~ Part V (9VAC5-170-120 et seq.) of 9VAC5-170 (Regulation for General Administration) and the Virginia Air Pollution Control Law.

~~K.~~ 9. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a minor NSR permit, or to render a minor NSR permit invalid.

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 minor NSR permit is invalid or revoked prior to any final decision rendered under subsection K of this section.

M. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a minor NSR 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.

N. Except with respect to minor NSR permits issued in accordance with Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), the provisions of subsections B, C, and D shall not apply to sources subject to the federal hazardous air pollutant new source review program.

9VAC5-80-1220. L. ~~Existence of permit no defense.~~

The existence of a minor NSR permit ~~under this section~~ shall not constitute defense to a violation of the Virginia Air Pollution Control Law or ~~these regulations~~ 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.

9VAC5-80-1230. M. ~~Compliance with local zoning requirements.~~

~~The owner shall~~ 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; provided, however, that such compliance does not relieve the board of its duty under 9VAC5-20-140 of these Regulations 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

~~N. Reactivation and permanent shutdown.~~

~~1. The reactivation of a stationary source is not subject to provisions of this~~

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~~section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions N 2 through N 4 of this section or 9VAC5-80-40 P 5.~~

~~2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of this chapter.~~

~~3. The final decision shall be rendered as follows:~~

~~a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.~~

~~b. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.~~

~~4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subdivision N 3 of this section.~~

9VAC5-80-1240. Q. Transfer of permits.

A.—1. No persons person shall transfer a minor NSR permit from one location to another, or from one piece of equipment to another.

B.—2. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current minor NSR 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.—3. In the case of a name change of a stationary source, the owner shall abide by any current minor NSR permit issued under the previous source name. The

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owner shall notify the board of the change in source name within 30 days of the name change.

D.——4. The provisions of this subsection section concerning the transfer of a minor NSR permit from one location to another shall not apply to the relocation of portable facilities emissions units that are exempt from the provisions of this section article by 9VAC5-80-11 9VAC5-80-1105 A 1 c.

E. The provisions of this section concerning the transfer of a minor NSR permit from one piece of equipment to another shall not apply to the replacement of an emissions unit that is exempt from the provisions of this article by 9VAC5-80-1105 A 2 a.

P. Circumvention.

Regardless of the exemptions provided in this section, no owner or other person shall circumvent the requirements of this section 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.

9VAC5-80-1250. General permits.

A. The requirements for issuance of a general permit are as follows:

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

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

b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.

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

2. Stationary sources or emissions units operating under the authority of a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General permits shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for

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stationary sources or emissions units to use in applying for the general permit.

4. General permits shall be issued in accordance with § 2.2-4006 A 8 of the Administrative Process Act.

5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:

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

b. The criteria to be used in determining which stationary sources or emissions units qualify for coverage under the general permit;

c. A brief description of the stationary source or emissions unit category that the department believes qualifies for coverage under the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category;

d. A brief description of the application process to be used by owners of stationary sources or emissions units to request coverage under the general permit; and

e. A brief description of the public comment procedures.

B. The requirements for application for coverage under a general permit are as follows:

1. Stationary sources or emissions units which qualify for coverage under a general permit may apply to the board for coverage under the terms of the general permit. Stationary sources or emissions units that do not qualify for coverage under a general permit shall apply for a minor NSR permit.

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

3. Stationary sources or emissions units that qualify for coverage under the general permit after coverage is granted to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall grant authority to operate under the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the

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general permit.

C. The requirements for granting authority to operate under a general permit are as follows:

1. The board shall grant authority to operate under the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.

2. Granting authority to operate under a general permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-1170.

3. A response to each general permit application may be provided at the discretion of the board. The general permit may specify a reasonable time period after which the owner of a stationary source or emissions unit that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Stationary sources or emissions units authorized to operate under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is authorized to operate under the general permit.

5. The general permit shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. The stationary source or emissions unit shall be subject to enforcement action under 9VAC5-80-1210 for operation without a minor NSR permit if the stationary source or emissions unit is later determined by the board not to qualify for the conditions and terms of the general permit.

9VAC5-80-1255. Actions to combine permit terms and conditions.

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the board may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the board.

3. Under no circumstances may an action to combine permit terms and

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conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

B. The board may take actions to combine the terms and conditions of state operating permits and new source review permits, along with any changes to state operating permits and new source review permits.

C. If the board and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the board may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the board may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer

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be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.

4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:

a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.

b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.

c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

9VAC5-80-1260. Actions to change permits.

A. The general requirements for actions to make changes to minor NSR permits are as follows:

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1. Except as provided in subdivision 3 of this subsection, changes to a minor NSR permit shall be made as specified under subsections B and C of this section and 9VAC5-80-1270 through 9VAC5-80-1300.

2. Changes to a minor NSR permit 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 minor NSR permit and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

4. This section shall not be applicable to general permits.

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

1. The permittee may initiate a change to a minor NSR 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 changes can be found in 9VAC5-80-1270 through 9VAC5-80-1290.

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 minor NSR permit through the use of permit reopenings as specified in 9VAC5-80-1300.

9VAC5-80-1270. Administrative permit amendments.

A. Administrative permit amendments shall be used 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 9VAC5-80-1240 have been fulfilled.

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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 will incorporate the changes without providing notice to the public under 9VAC5-80-1170 and designate in the permit amendment that such permit revisions have 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.

9VAC5-80-1280. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal 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 emissions limitation or other requirement.

4. Except as provided in subdivision C 2 of this section, 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 project subject to the new source review program or as a modification under § 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 modifications under the new source review program or under § 112 of the federal Clean Air Act that would otherwise require a permit under the new source review program.

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6. Are not required to be processed as a significant amendment under 9VAC5-80-1290; or as an administrative permit amendment under 9VAC5-80-1270.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve 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.

2. Require new or more frequent monitoring or reporting by the permittee or a reduction in the level of an emissions cap.

3. Designate any minor NSR permit term or condition that meets the criteria in 9VAC5-80-1120 F 1 as state-only enforceable as provided in 9VAC5-80-1120 F 2 for any minor NSR permit or any repealed or amended regulation from which this article is derived.

4. Apply any minor NSR permit term or condition that is applicable to an existing emissions unit, to its replacement emissions unit that otherwise meets the requirements for exemption from the minor new source review permit program requirements under the provisions of 9VAC5-80-1105 A 2 a.

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

1. In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated air pollutant.

2. Any emissions cap contained in the permit shall be adjusted downward appropriately so that the emissions unit's potential to emit does not reflect any compound no longer considered a regulated air pollutant.

D. A request for the use of minor permit amendment procedures 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, accompanied by a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

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E. The public participation requirements of 9VAC5-80-1170 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 will 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 follows:

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 1 of this subsection 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 amendment.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify if the applicant has submitted a suggested proposed permit amendment pursuant to subsection D of this section. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

9VAC5-80-1290. 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 9VAC5-80-1280 or as administrative amendments under 9VAC5-80-1270.

2. Significant amendment procedures shall be used for those permit amendments that meet any one of the following criteria:

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

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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 emissions limitation or other requirement.

c. Seek to establish or change a minor NSR 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 project subject to the new source review program or as a modification under § 112 of the federal Clean Air Act; and

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

3. Significant amendment procedures may not be used to bypass the public participation requirements in 9VAC5-80-1170 for an application for a project that would be subject to the minor 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. At the discretion of the board, the provisions of 9 VAC 9VAC5-80-1170 D and E shall apply to requests made under this section if the emissions unit subject to the request under this section was subject to review in any previous permit application that was subject to 9VAC5-80-1170.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public hearing is required, processing time for a permit amendment is normally 180 days following receipt of a complete request except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25. The board may extend this time period if additional information is needed.

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.

9VAC5-80-1300. Reopening for cause.

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A. A minor NSR permit may be reopened and revised under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions 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 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 terms and conditions of the permit are not sufficient to meet all of the requirements contained in this article.

4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a minor NSR 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.

9VAC5-80-1310. Repealed.

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~~9VAC5-80-11.~~ 9VAC5-80-1105. Stationary source Permit exemption levels exemptions.

A. General. The general requirements for minor NSR permit exemptions are as follows:

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section. In determining whether a facility source is exempt from the requirements of ~~9VAC5-80-10~~ provisions of this article, the provisions of subsections B through ~~H~~ D of this section are independent from the provisions of ~~subsection I~~ subsections E and F of this section. A facility source must be determined to be exempt both under the provisions of subsections B through ~~H~~ D of this section taken as a group and under the provisions of ~~subsection I~~ subsections E and F of this section to be exempt from ~~9VAC5-80-10~~ this article.

b. Vegetative waste recycling/mulching operations that do not exceed 2100 hours of operation in any 12-month consecutive period at a single stationary source. To qualify as an exemption under this subdivision, the total rated capacity of all diesel engines at the source, including portable diesel engines temporarily located at the site, may not exceed 1200 brake horsepower (output).

c. The location of a portable emissions unit at a site subject to the following conditions:

(1) Any new emissions from the portable emissions unit are secondary emissions.

(2) The portable emissions unit is either subject to (i) a minor NSR permit authorizing the emissions unit as a portable emissions unit subject to this subdivision, or (ii) a general permit.

(3) The emissions of the portable emissions unit at the site would be temporary.

(4) The portable emissions unit would not undergo modification or replacement that would be subject to this article.

(5) The portable emissions unit is suitable to the area in which it is to be located.

(6) Reasonable notice is given to the board prior to locating the emissions unit to the site identifying the proposed site and the probable duration of

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operation at the site. Such notice shall be provided to the board not less than 15 days prior to the date the emissions unit is to be located at the site unless a different notification schedule is previously approved by the board.

d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9VAC5-20-220.

e. The use by any existing stationary source or emissions unit of an alternative fuel or raw material, if the following conditions are met:

(1) The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

(2) The use of an alternative fuel or raw material would not be subject to review under this article as a project.

2. The provisions of this article do not apply to the following stationary sources or emissions units provided the stationary source or emissions unit is (i) exempt under the provisions of subsections E and F of this section and (ii) meets any other applicable criteria or conditions set forth in this subdivision.

a. Replacement of an emissions unit subject to the following criteria:

(1) The replacement emission unit is (i) of an equal or lesser size and (ii) of an equal or lesser rated capacity as compared to the replaced emissions unit.

(2) The replacement emissions unit is functionally equivalent to the replaced emissions unit.

(3) The replacement emissions unit does not change the basic design parameters of the process operation.

(4) The potential to emit of the replacement emissions unit does not exceed the potential to emit of the replaced emissions unit. If the replaced emissions unit is subject to terms and conditions contained in a minor NSR permit, the owner may, concurrently with the notification required in subdivision (6) of this subdivision, request a minor amendment as provided in 9VAC5-80-1280 B 4 to that permit to apply those terms and conditions to the replacement emissions unit. However, the replacement emissions unit's potential to emit is not limited for the purposes of this subdivision unless

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(and until) the requested minor permit amendment is granted by the board.

(5) The replaced emissions unit is either removed or permanently shut down in accordance with the provisions of 9VAC5-20-220.

(6) The owner notifies the board, in writing, of the proposed replacement at least 15 days prior to commencing construction on the replacement emissions unit. Such notification shall include the size, function, and rated capacity of the existing and replacement emissions units and the registration number of the affected stationary source.

b. A reduction in stack outlet elevation provided that the stack serves only facilities that have been previously determined to be exempt from the minor NSR program.

3. In determining whether a facility is exempt from the requirements of 9VAC5-80-10 provisions of this article under the provisions of subsections B and C of this section, the definitions in the rule in 9VAC5 Chapter 40 (9VAC5-40-10 et seq.) 9VAC5-40 (Existing Stationary Sources) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.

4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the board that the facility was exempt at the time a minor NSR permit would have otherwise been required under this article.

~~B. New source exemption levels by size. Facilities as specified below shall be exempt from the requirements of 9VAC5-80-10 provisions of this article as they pertain to construction, reconstruction or relocation.~~

1. Fuel burning equipment: units (external combustion units, not engines and turbines) and space heaters in a single application as follows:

a. Except as provided in subdivision b of this subdivision, the exemption thresholds in subdivisions (1) through (4) of this subdivision shall be applied on an individual unit basis for each fuel type.

(1) Any unit Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

~~b.~~ (2) Any unit Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

~~c.~~ (3) Any unit Using liquid and gaseous fuel with a maximum

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heat input of less than 10,000,000 Btu per hour.

d. ~~(4) Any unit Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour, unless subject to a new source performance standard in Article 5 (9VAC5-50-400 et seq.) of 9VAC5 Chapter 50.~~

~~e. Any unit that powers a mobile source but is removed for maintenance or repair and testing.~~

b. In ozone nonattainment areas designated in 9VAC5-20-204 or ozone maintenance areas designated in 9VAC5-20-203, the exemption thresholds in subdivision a of this subdivision shall be applied in the aggregate for each fuel type.

2. Engines and turbines that are used for emergency purposes only and that do not individually exceed 500 hours of operation per year at a single stationary source as follows. All engines and turbines in a single application must also meet the following criteria to be exempt.

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair or testing.

~~2. Solvent metal cleaning operations. Any solvent metal cleaning operation with an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~3.4. Volatile organic compound storage and transfer operations:~~

~~Any storage or transfer operation involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:~~

~~a. Volatile organic compound transfer operations: involving:~~

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(1) Any tank of 2,000 gallons or less storage capacity: or

(2) Any operation outside the volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Volatile organic compound storage operations: involving any

Any tank of 40,000 gallons or less storage capacity.

~~4. Large appliance coating application systems.~~

~~Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~5. Magnet wire coating application systems.~~

~~Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~6. Automobile and light duty truck coating application systems.~~

~~a. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~b. Any vehicle refinishing operation.~~

~~7. Can coating application systems.~~

~~Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~8. Metal coil coating application systems.~~

~~Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~9. Paper and fabric coating application system.~~

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~~Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~10. Vinyl coating application systems.~~

~~Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~11. Metal furniture coating application systems.~~

~~Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~12. Miscellaneous metal parts and products coating application systems.~~

~~a. Any coating application system if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~5.—— b. Any Vehicle customizing coating operation operations, if production is less than 20 vehicles per day.~~

~~6.—— c. Any Vehicle refinishing operation operations.~~

~~7.—— d. Any Coating operations for the exterior of fully assembled aircraft or marine vessel exterior coating operation vessels.~~

~~13. Flatwood paneling coating application systems.~~

~~Any coating application system if it is within in a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~14. Graphic arts (printing processes).~~

~~Any printing process if it is within a plant that has an uncontrolled emission rate of not more than seven tons per year, 40 pounds per day and eight pounds per hour.~~

~~15 8. Petroleum liquid storage and transfer operations.~~

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~~Any storage or transfer operation~~ involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of ~~9VAC5-80-10~~ this article when used or stored at ambient temperatures); and any operation or facility specified below:

a. ~~Bulk terminals~~— Gasoline bulk loading operations:

~~Any operation~~ at bulk terminals located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Gasoline dispensing facilities.

~~Any gasoline dispensing facility.~~

c. ~~Bulk plants~~— Gasoline bulk loading operations: at bulk plants:

(1) ~~Any facility~~ With an expected daily throughput of less than 4,000 gallons; or

(2) ~~Any operation~~ Located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

d. ~~Account/tank trucks;~~ however,

~~No permit is required for account/tank trucks,~~ but permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations: involving:

(1) Any tank of 40,000 gallons or less storage capacity; ;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) Any tank storing waxy, heavy pour crude oil.

46 9. Petroleum dry cleaning plants:

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~~Any petroleum dry cleaning plant~~ with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9VAC5-50-410.

~~17 10. Wood product manufacturing plants.~~

Any addition of, relocation of, or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

~~18 11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.~~

~~Any wood sawmill.~~

12. Exhaust flares at natural gas and coalbed methane extraction wells.

13. Temporary facilities subject to the following conditions:

a. The operational period of the temporary facility (the period from the date that the first pollutant-emitting operation is commenced to the date of shutdown of the temporary facility) is 12 months or less.

b. The uncontrolled emissions rate of any regulated air pollutant that would be emitted from the temporary facility during the operational period does not exceed the applicable exempt emission rate as set forth in 9VAC5-80-1105 C (exemption rates for new stationary sources) or 9VAC5-80-1105 D (exemption rates for projects). The uncontrolled emission rate may be calculated based upon the total number of hours in the operational period instead of 8760 hours. All temporary facilities that will be co-located at a stationary source shall be considered in the aggregate when calculating the uncontrolled emissions rate under this subdivision.

c. Upon completion of the operational period, the temporary facility shall be either (i) shut down in accordance with 9VAC5-20-220 or (ii) returned to its original state and condition unless, prior to the end of the operational period, the owner demonstrates in writing to the satisfaction of the board that the facility is exempt under 9VAC5-80-1105 C (exemption rates for new stationary sources) or D (exemption rates for

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new stationary projects) using 8760 hours of operation per year.

d. Not less than 30 calendar days prior to commencing the operational period, the owner shall notify the board in writing of the proposed temporary facility and shall provide (i) calculations demonstrating that the temporary facility is exempt under this subdivision and under 9VAC5-80-1105 E and F; and, (ii) proposed dates for commencing the first pollutant-emitting operation and shutdown of the temporary facility.

e. The owner shall provide written notifications to the board of (i) the actual date of commencing the first pollutant-emitting operation and (ii) the actual date of shutdown of the temporary facility. Notifications shall be postmarked not more than 10 days after such dates.

14. Open pit incinerators subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the purpose of disposal of clean burning waste and debris waste.

15. Poultry or swine incinerators located on a farm where all of the following conditions are met:

a. Auxiliary fuels for the incinerator unit shall be limited to natural gas, liquid petroleum gas, and/or distilled petroleum liquid fuel. Solid fuels, waste materials, or residual petroleum oil products shall not be used to fire the incinerator.

b. The waste incinerated shall be limited to pathological waste (poultry or swine remains). Litter and animal bedding or any other waste materials shall not be incinerated.

c. The design burn rate or capacity rate of the incinerator shall be 400 pounds per hour or less of poultry or swine. This value shall apply only to the mass of the poultry or swine and shall not include the mass of the fuel.

d. The incinerator shall be used solely to dispose of poultry or swine originating on the farm where the incinerator is located.

e. The incinerator shall be owned and operated by the owner or operator of the farm where the incinerator is located.

f. The incinerator shall not be charged beyond the manufacturer's recommended rated capacity.

g. Records shall be maintained on site to demonstrate compliance with the conditions for this exemption, including but not limited to the total amount of

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pathological waste incinerated and the fuel usage on a calendar year quarterly basis.

~~C. — New sources with no exemptions.~~

~~Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of 9VAC5-80-10 as they pertain to construction, reconstruction or relocation.~~

- ~~1. — Petroleum refineries.~~
- ~~2. — Asphalt plants.~~
- ~~3. — Chemical fertilizer manufacturing plants.~~
- ~~4. — Kraft pulp mills.~~
- ~~5. — Sand and gravel processing facilities.~~
- ~~6. — Coal preparation plants.~~
- ~~7. — Stone quarrying and processing facilities.~~
- ~~8. — Portland cement plants.~~
- ~~9. — Wood product manufacturing plants.~~
- ~~10. — Secondary metal operations.~~
- ~~11. — Lightweight aggregate process operations.~~
- ~~12. — Feed manufacturing plants.~~
- ~~13. — Incinerators.~~
- ~~14. — Coke ovens.~~
- ~~15. — Sulfuric acid production units.~~
- ~~16. — Sulfur recovery operations.~~
- ~~17. — Primary metal operations.~~
- ~~18. — Nitric acid production units.~~

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19. ~~Concrete batching plants.~~

20. ~~Pharmaceutical products manufacturing plants.~~

21. ~~Rubber tire manufacturing plants.~~

D C. New source exemption levels by emission rate. The exemption of new stationary sources shall be determined as specified below:

1. Facilities not covered by subsection B or C of this section with uncontrolled emission rates less than all of the significant emission rates specified below shall be exempt from the requirements of 9VAC5-80-10 pertaining to construction, reconstruction or relocation. New stationary sources with uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate of a new stationary source is the sum of the uncontrolled emission rates of the individual affected emissions units. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting new stationary sources under this subsection.

EMISSION RATES.

<u>Pollutant</u>	<u>Emissions Rate</u>
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
<u>Particulate Matter</u>	<u>25 tpy</u>
Particulate Matter (PM ₁₀)	15 tpy
<u>Particulate Matter (PM_{2.5})</u>	<u>10 tpy</u>
Volatile organic compounds	25 tpy
Lead	0.6 tpy
<u>Fluorides</u>	<u>3 tpy</u>
<u>Sulfuric Acid Mist</u>	<u>6 tpy</u>
<u>Hydrogen Sulfide (H₂S)</u>	<u>9 tpy</u>
<u>Total Reduced Sulfur (including H₂S)</u>	<u>9 tpy</u>
<u>Reduced Sulfur Compounds (including H₂S)</u>	<u>9 tpy</u>
<u>Municipal waste combustor organics (measured as total tetra-throughocta-</u>	<u>3.5 x 10⁻⁶ tpy</u>

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<u>chlorinated dibenzo-p-dioxins and dibenzofurans)</u>	
<u>Municipal waste combustor metals (measured as particulate matter)</u>	<u>13 tpy</u>
<u>Municipal waste combustor acid gases (measured as the sum of SO₂ and HCl)</u>	<u>35 tpy</u>
<u>Municipal solid waste landfill emissions (measured as nonmethane organic compounds)</u>	<u>22 tpy</u>

2. If the particulate matter (PM₁₀ or PM_{2.5}) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀ or PM_{2.5}), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM₁₀ or PM_{2.5}) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a new stationary source if all of the emissions considered in calculating the uncontrolled emission rate of the new stationary source are fugitive emissions.

E D. ~~Modified source exemption levels by emission rate.~~ The exemption of projects shall be determined as specified below:

1. ~~Facilities with increases in uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the requirements of 9VAC5-80-10 pertaining to modification. A project that would result in increases in uncontrolled emission rates at the stationary source less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate increase of a project is the sum of the uncontrolled emission rate increases of the individual affected emissions units. Uncontrolled emissions rate decreases are not considered as part of this calculation. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting projects under this subsection.~~

EMISSION RATES.

<u>Pollutant</u>	<u>Emissions Rate</u>
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	10 tpy

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Sulfur Dioxide	10 tpy
<u>Particulate matter</u>	<u>15 tpy</u>
Particulate matter PM ₁₀	10 tpy
<u>Particulate matter (PM_{2.5})</u>	<u>6 tpy</u>
Volatile organic compounds	10 tpy
Lead	0.6 tpy
<u>Fluorides</u>	<u>3 tpy</u>
<u>Sulfuric Acid Mist</u>	<u>6 tpy</u>
<u>Hydrogen Sulfide (H₂S)</u>	<u>9 tpy</u>
<u>Total Reduced Sulfur (including H₂S)</u>	<u>9 tpy</u>
<u>Reduced Sulfur Compounds (including H₂S)</u>	<u>9 tpy</u>
<u>Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)</u>	<u>3.5 x 10⁻⁶ tpy</u>
<u>Municipal waste combustor metals (measured as particulate matter)</u>	<u>13 tpy</u>
<u>Municipal waste combustor acid gases (measured as the sum of SO₂ and HCl)</u>	<u>35 tpy</u>
<u>Municipal solid waste landfill emissions (measured as nonmethane organic compounds)</u>	<u>22 tpy</u>

2. If the particulate matter (PM₁₀ or PM_{2.5}) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀ or PM_{2.5}), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM₁₀ or PM_{2.5}) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a project if all of the emissions considered in calculating the uncontrolled emission rate increase of the project are fugitive emissions.

~~F. New source performance standards and national emission standards for hazardous air pollutants.~~

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~~Regardless of the provisions of subsections B, D and E of this section, affected facilities subject to Article 5 (9VAC5-50-400 et seq.) of 9VAC5 Chapter 50 or subject to Article 1 (9VAC5-60-60 et seq.) of 9VAC5 Chapter 60 shall not be exempt from the provisions of 9VAC5-80-10, with the exception of those facilities which would be subject only to recordkeeping or reporting requirements or both under Article 5 (9VAC5-50-400 et seq.) of 9VAC5 Chapter 50 or Article 1 (9VAC5-60-60 et seq.) of 9VAC5 Chapter 60.~~

~~G. Relocation of portable facilities.~~

~~Regardless of the provisions of subsections B, C, D, E and F of this section, a permit will not be required for the relocation of a portable emissions unit for which a permit has been previously granted under this chapter provided that:~~

- ~~1. The emissions of the unit at the new location would be temporary;~~
- ~~2. The emissions from the unit would not exceed its allowable emissions;~~
- ~~3. The unit would not undergo modification or reconstruction;~~
- ~~4. The unit is suitable to the area in which it is to be located; and~~

~~5. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.~~

~~H. Requirements for exempted facilities.~~

~~Any facility exempted from the provisions of 9VAC5-80-10 by subsection B of this section shall be subject to the provisions of any rule which would apply to the facility if it were an existing source unless specifically exempted by that rule.~~

I E. Exemption levels Exemptions for stationary sources of toxic pollutants. not subject to the federal hazardous air pollutant new source review program shall be as follows:

1. Facilities Stationary sources with an increase in the uncontrolled emission rate of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV® in subdivision I 4 of this section exempt from the requirements of Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) as provided in 9VAC5-60-300 C 1, C 2, C 7, D, or E shall be exempt from the requirements of 9VAC5-80-10 provisions of this article pertaining to modification, provided the increase in the uncontrolled emission rate of the

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~~pollutant does not exceed 22.8 pounds per hour or 100 tons per year.~~

~~2. Facilities with an uncontrolled emission rate of a toxic pollutant equal to or less than the exempt emission rate calculated using the exemption formulas for the applicable TLV[®] in subdivision 1 4 of this section shall be exempt from the requirements of 9VAC5-80-10 pertaining to construction, reconstruction or relocation, provided the uncontrolled emission rate of the pollutant does not exceed 22.8 pounds per hour or 100 tons per year.~~

~~3. If more than one exemption formula applies to a toxic pollutant emitted by a facility, the uncontrolled emission rate of that pollutant shall be equal to or less than both applicable exemption formulas in order for the source to be exempt for that pollutant. The exemption formulas apply on an individual basis to each toxic pollutant for which a TLV[®] has been established.~~

~~4. Exemption formulas.~~

~~a. For toxic pollutants with a TLV-C[®], the following exemption formula applies:~~

~~Exempt Emission Rate (pounds per hour) =~~

$$\text{TLV-C}^{\text{®}} \text{ (mg/m}^3\text{)} \times 0.033$$

~~b. For toxic pollutants with both a TLV-STEL[®] and a TLV-TWA[®], the following exemption formulas apply:~~

~~Exempt Emission Rate (pounds per hour) =~~

$$\text{TLV-STEL}^{\text{®}} \text{ (mg/m}^3\text{)} \times 0.033$$

~~Exempt Emission Rate (tons per year) =~~

$$\text{TLV-TWA}^{\text{®}} \text{ (mg/m}^3\text{)} \times 0.145$$

~~c. For toxic pollutants with only a TLV-TWA[®], the following exemption formulas apply:~~

~~Exempt Emission Rate (pounds per hour) =~~

$$\text{TLV-TWA}^{\text{®}} \text{ (mg/m}^3\text{)} \times 0.066$$

~~Exempt Emission Rate (tons per year) =~~

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~~TLV-TWA@ (mg/m³) x 0.145~~

~~5. Exemption from the requirements of 9VAC5-80-10 for any facility which has an uncontrolled emission rate of any toxic pollutant without a TLV@ shall be determined by the board using available health effects information.~~

~~6. The exemption determination shall be made by the board using information submitted by the owner at the request of the board as set out in 9VAC5-50-200.~~

~~7. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the requirements of 9VAC5-80-10 as they pertain to modification, construction, reconstruction or relocation provisions of this article.~~

~~a. Incinerators, unless (i) the incinerator is used exclusively as air pollution control equipment, (ii) the incinerator is an open pit incinerator subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the disposal of clean burning waste and debris waste, or (iii) the incinerator is a poultry or swine incinerator located on a farm and all of the conditions of subdivision B 15 of this section are met.~~

~~b. Ethylene oxide sterilizers.~~

~~c. Boilers, incinerators or industrial furnaces burning hazardous waste fuel for energy recovery or destruction, or processing for materials recovery or as an ingredient as defined in 40 CFR 260.10 and subject to 9VAC20-60 (Hazardous Waste Regulations).~~

~~For the purposes of this subdivision, hazardous waste fuel means (i) hazardous waste that is burned for energy recovery or (ii) fuel produced from hazardous waste by processing, blending or other treatment (Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.). Hazardous waste means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness, or (ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed (§ 10.1-1400 of the Virginia Waste Management Act). This subdivision shall not apply to boilers or industrial furnaces burning used oil, which is defined as any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities (Hazardous Waste Management Regulations, 9 VAC 20-60-10 et seq.).~~

~~F. This subsection provides information on the extent to which any source category or portion of a source category subject to the federal hazardous air pollutant new source review program may be exempt from the provisions of this article.~~

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1. This subdivision addresses those source categories subject to the provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 that establish the requirements 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. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61.

2. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.5 that establish the requirements 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. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 63.

3. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.50 through 40 CFR 63.56 that establish the requirements for issuing notices of MACT approval prior to the construction of a new emissions unit listed in the source category schedule for standards. Any information regarding exemptions for a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. This subdivision addresses those source categories for which EPA has promulgated a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act in the source category schedule for standards. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article.

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9VAC5 CHAPTER 50.
NEW AND MODIFIED STATIONARY SOURCES.

PART II.
Emission Standards.

ARTICLE 4.
Standards of Performance For Stationary Sources (Rule 5-4).

9VAC5-50-240. Applicability and designation of affected facility.

A. The affected facilities ~~in~~ at stationary sources to which the provisions of this article apply are ~~facilities emissions units that emit or cause air pollution~~ are subject to the new source review program.

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

C. The provisions of this article apply to any regulated air pollutant except to the extent that it is regulated under 9VAC5-60 (Hazardous Air Pollutant Sources). However, the exemption provided by this subsection does not extend to other properties of the exempted pollutants that may require regulation under 9VAC5-40 (Existing Stationary Sources) or 9VAC5-50 (New and Modified Stationary Sources).

9VAC5-50-250. Definitions.

A. For the purpose of ~~applying this article in the context of these regulations the Regulations for the Control and Abatement of Air Pollution and subsequent amendments or any orders issued by the board~~ related uses, the words or terms shall have the meaning meanings given them in subsection C of this section.

B. ~~As used in this article~~ Unless otherwise required by context, all terms not defined ~~here~~ herein shall have the meaning meanings given them in ~~9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless otherwise required by context~~ 9VAC5-80 (Permits for Stationary Sources), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

" Best available control technology" or "BACT" means, as used in 9VAC5-50-260, a standard of performance an emissions limitation (including a visible emission standard) based on the maximum degree of emission reduction for any pollutant which would be emitted from ~~any proposed~~ a new stationary source or project which the board, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for ~~such source~~ the new stationary

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source or project through the application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard in Article 5 (9VAC5-50-400 et seq.) of this part or Article 1 (9VAC5-60-60 et seq.) or Article 2 (9VAC5-60-90 et seq.) of Part II of ~~9VAC5 Chapter 60~~ 9VAC5-60 (Hazardous Air Pollutant Sources). If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emission standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead of requiring the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. In determining best available control technology for stationary sources subject to Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5 Chapter 80 (Permits for Stationary Sources), consideration shall be given to the nature and amount of the emissions, emission control efficiencies achieved in the industry for the source type, total cost effectiveness, and where appropriate, the cost effectiveness of the incremental emissions reduction achieved between control alternatives.

"Lowest achievable emission rate" means for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (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) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of 9VAC5 Chapter 80.

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9VAC5-50-260. Standard for stationary sources.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility.

B. A new stationary source shall apply best available control technology for each regulated pollutant for which there would be an uncontrolled emission rate equal to or greater than the levels in 9VAC5-80-1105 C. For a new stationary source, a permit may be issued pursuant to Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) containing such terms and conditions as may be necessary to implement a best available control technology determination for any regulated air pollutant that may be emitted from any affected emissions unit.

C. A project shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emission rate equal to or greater than the levels in 9VAC5-80-1105 D. This requirement applies to each affected emissions unit in the project. For a project, a permit may be issued pursuant to Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) containing such terms and conditions as may be necessary to implement a best available control technology determination for any regulated air pollutant emitted, or that may be emitted, from any affected emissions unit.

D. For the phased construction of new stationary sources or projects, the BACT determination shall be reviewed and modified, as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the new stationary source or project. At such time, the owner of the applicable stationary source or project may be required to demonstrate the adequacy of any previous BACT determination for the affected emissions units.

9VAC5-50-390. Permits.

A permit may be required prior to beginning any of the activities specified below ~~and~~ if the provisions of 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) and 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) ~~may~~ apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.

REGULATIONS FOR THE CONTROL AND ABATEMENT OF AIR POLLUTION (9VAC5 CHAPTER 80)

3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (restart-up) of a facility.
6. Operation of a facility.

SIP#\H05-SIP-1-REG

**CERTIFICATION OF PUBLIC PARTICIPATION ACTIVITIES
AND COMPLIANCE WITH
STATE ADMINISTRATIVE PROCEDURES**

As required by 40 CFR 51.102 and Section 2.1 of Appendix V of 40 CFR Part 51, the following information regarding public participation activities and compliance with state administrative procedures is provided.

PUBLIC PARTICIPATION ACTIVITIES

As required by 40 CFR Part 51.102(a) and (d)(1) and (2), the public was given notice of the opportunity to submit written and oral comments concerning a proposed revision to the Commonwealth of Virginia State Implementation Plan. The notice was provided in the Virginia Register and in seven major newspapers (one in each Air Quality Control Region) throughout the Commonwealth, along with the location of the proposal for public inspection, on February 1, 2010. The public comment period closed on May 3, 2010. The attached copy of the notice provides the evidence required by Section 2.1(f) of Appendix V of 40 CFR Part 51.

As required by 40 CFR 51.102(a), a hearing to accept public comment concerning the proposed revision was held in the Second Floor Conference Room C, DEQ Central Office at 629 E. Main Street, Richmond, Virginia, at 10:00 a.m. on April 14, 2010. As required by 40 CFR 51.102(f) and Section 2.1(g) of Appendix V of 40 CFR Part 51, the hearing was held in accordance with the information found in the public notice, and according to the state's laws and the requirements of 40 CFR 51.102.

The Regional Administrator for the U.S. Environmental Protection Agency was notified of the hearing, as was each local air pollution control agency which will be significantly affected by the revision and is located in the affected Air Quality Control Regions. In addition, the District of Columbia, Maryland and Tennessee, which share affected interstate Air Quality Control Regions with Virginia, were notified of the hearing. These notifications follow the requirements of 40 CFR Part 51.102(d)(3), (4) and (5).

COMPLIANCE WITH STATE ADMINISTRATIVE PROCEDURES

As required by Section 2.1(b) of Appendix V of 40 CFR Part 51, the regulation amendments were published in the Virginia Register of Regulations on October 8, 2012 after being duly adopted by the State Air Pollution Control Board on September 10, 2010, certified by the Office of the Attorney General as within the Board's statutory authority on September 17, 2010 and thus fully enforceable under Virginia law, and submitted to the Virginia Registrar on behalf of the Board by the Department of Environmental Quality as a true and accurate copy of the duly adopted regulation on September 12, 2012, providing the evidence required by Section 2.1(b) and (e) of

Appendix V of 40 CFR Part 51. As required by Section 2.1(d) of Appendix V of 40 CFR Part 51, a copy of the actual regulation submitted for approval and incorporation by reference into the Commonwealth of Virginia State Implementation Plan is attached, along with the effective date of November 7, 2012.

On March 29, 1993, the Commonwealth submitted a state implementation plan (SIP) revision to EPA concerning its minor new source review (MNSR) program (hereafter the 1993 submittal). On July 24, 1996 (61 FR 38388), EPA approved the submittal with some exceptions.

Since the 1993 submittal, the Commonwealth has completed several substantive regulatory revisions relative to its MNSR program as noted in Enclosure 1. The above statement of compliance with state administrative procedures is for the latest of these revisions (H05). Revision H05 contains the currently effective version of all the provisions of the MNSR regulation except for 9VAC5-50-390 and 9VAC5-80-1230; the currently effective versions of those are located in Revision YY. A copy of that revision, as published in the Virginia Register, is also attached. Pertinent dates regarding that revision are found below:

Revision YY (9VAC5 Chapter 80, Article 6 and 9VAC5 Chapter 50, Article 4)

Adoption Date Final: May 21, 2002

OAG Certification Date: May 23, 2002

VR Publication Date Final: June 17, 2002

Effective Date: September 1, 2002

Enclosure 1 includes a version of the MNSR program regulation which is intended to meet the requirement found in Section 2.1 (d) of Appendix V to 40 CFR Part 51 which requires the SIP submittal to contain a copy of the regulation which includes indications of the changes made (such as, redline/strikethrough) to the existing approved plan, where applicable.

Only those provisions of the final regulation which are not marked out on the attached copies are to be considered part of the Virginia State Implementation Plan.

TEMPLATES\SIP-REG\REG02-PH
SIP\MINOR NSR\H05-SIP-2.DOC

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Public Notice - Environmental Regulation
NOTICE OF ACTION: The State Air Pollution Control Board is considering the amendment of a regulation concerning minor new source review (NSR). A regulation is a general rule governing people's rights or conduct that is upheld by a state agency. If adopted, the Commonwealth intends to submit the regulation or portion thereof as a revision to its state implementation plan (SIP) in accordance with the requirements of §110(a) of the federal Clean Air Act.
REGULATIONS AFFECTED: The regulations of the board affected by this action are Permits for New and Modified Stationary Sources (Article 6 of Part II of 9VACS-80), and Standards of Performance for Stationary Sources (Article 4 of Part II of 9VACS-50).
PURPOSE OF NOTICE: The board is seeking comments through the Department of Environmental Quality (DEQ) on the 1) proposal, 2) costs and benefits of the proposal, 3) effects on farm and forest land preservation, and 4) impacts on small businesses.
 DEQ seeks information on costs and benefits associated with the exemption of certain emissions units from minor NSR applicability: 1) a proposed exemption for open pit incinerators; 2) aggregating capacities of similar equipment at a new source or project that is now individually exempted by source type and size, when considering whether or not that equipment should be exempt; and 3) limiting aggregation of equipment capacities for this exemption to areas such as nonattainment or maintenance areas compared to allowing the exemption statewide.
 DEQ seeks comment concerning the adequacy of the proposal to address separate requests for exempt changes that would be subject to the NSR program if considered together.
 DEQ seeks information on costs and benefits associated with debottlenecked emissions units: 1) discontinuing the practice of considering emissions increases from debottlenecked units when evaluating program applicability; and 2) continuing to apply BACT only to physically or operationally changed units and not debottlenecked units.
 DEQ seeks information on costs and benefits associated with permit emissions limits that may be placed on new or changed emissions units: 1) applying permit emissions limitations representing BACT to any regulated pollutant emitted by any emissions unit at a new source when the uncontrolled emissions rate of that pollutant from the source is greater than the exempt emission rate threshold; 2) applying permit emissions limits representing BACT to any regulated pollutant emitted by any new or changed emissions unit in a project when the uncontrolled emissions rate increase of that pollutant from the project is greater than the exempt emission rate threshold; and 3) applying such permit emissions limits to other pollutants emitted by new or changed units that may not exceed the exempt emission rate threshold as may be needed to implement BACT.
 The board may take these comments under consideration along with DEQ's recommendation, but will decide for or against the proposals, or will modify the proposals, based upon its own deliberations.
PUBLIC COMMENT PERIOD: February 1 to May 3, 2010.
PUBLIC HEARING: Second floor conference room C, DEQ, 629 East Main St, Richmond, VA, 10:00 am, April, 14, 2010. A question and answer period will be held one half hour prior to the beginning of the public hearing.
PUBLIC COMMENT STAGE: Notice of Public Comment.

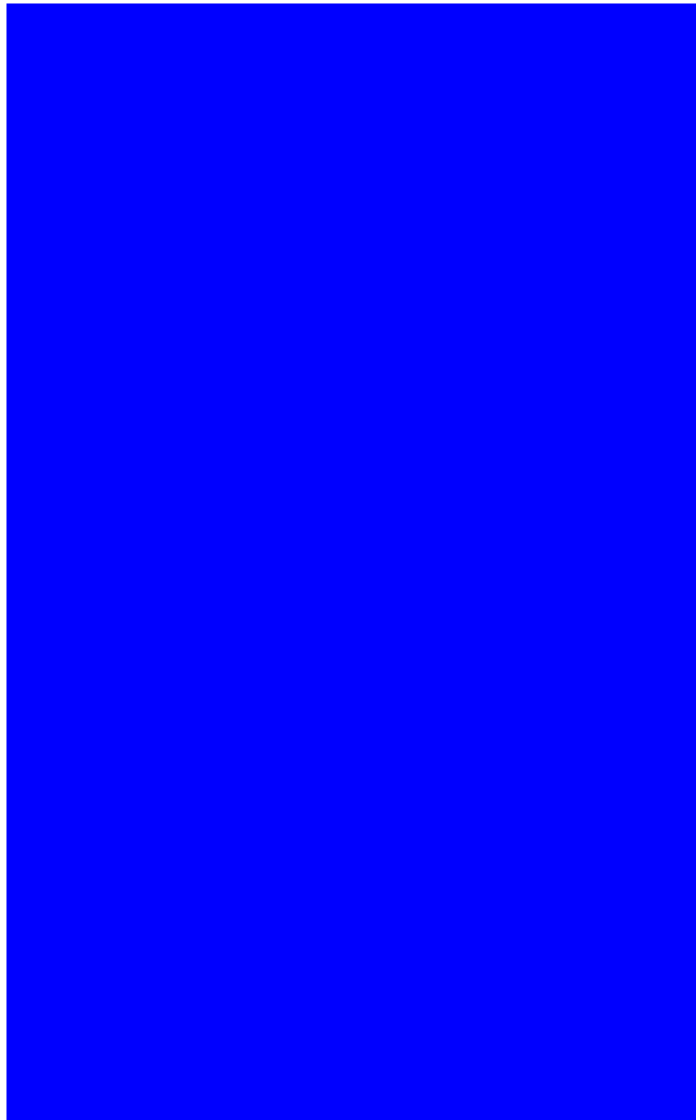
DESCRIPTION OF PROPOSAL: The primary change being made to the program is to convert from a permit applicability approach for modifications which looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from new and modified emissions units. Currently, applicability is based on the net emissions increase based on all the source-wide emissions changes due to or directly resultant from the physical or operational change. The proposed program would base permit applicability on the emissions increases from only those emissions units that undergo a physical or operational change in the project. In addition, numerous other changes are being made, including but not limited to, changes in the way that BACT determinations are made, removal of transportable engines from the non-road engine exclusion, aggregation of emissions units for some exemptions, and resolution of regulatory conflicts concerning replacement units and open pit incinerators.
FEDERAL INFORMATION: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104, except for the following: 1) provisions related to state-only regulated air pollutants (9VACS-80-1105 E; 9VACS-80-1110 C, definitions of regulated air pollutant and toxic pollutant; 9VACS-80-1180 A 1; 9VACS-80-1190 J; and 9VACS-80-1200 B); 2) a provision related to applicability determinations (9VACS-80-1160 A); 3) provisions related to public participation activities conducted by the applicant (9VACS-80-1170 A, B and C); and 4) provisions related to direct consideration of permit actions by the board (9VACS-80-1160 D and 9VACS-80-1170 F and G).
LOCALITY PARTICULARLY AFFECTED: There is no locality which will bear any identified disproportionate material air quality impact due to the proposal which would not be experienced by other localities.
HOW TO COMMENT: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address and telephone number of the person commenting and be received by DEQ on the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All testimony, exhibits and documents received are part of the public record.
TO REVIEW REGULATION DOCUMENTS: The proposal and an analysis conducted by DEQ (including estimated impacts and benefits of the proposed regulation, an explanation of need, an estimate of the impact on small businesses, comparison with federal requirements, and a discussion of alternatives), are available on the Town Hall web site (<http://www.townhall.virginia.gov>) and the DEQ Air Public Notices for Regulations web site (<http://www.deq.virginia.gov/air/permitting/regnotes.htm>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 am and 4:30 pm of each business day until the close of the public comment period at the following DEQ locations: 1) Main Street Office, 8th Floor, 629 E. Main St, Richmond VA, 804-698-4070, 2) Southwest Regional Office, 255 Deadmore St, Abingdon VA, 540-676-4800, 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Rd, Roanoke VA, 540-562-6700, 4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Rd, Lynchburg VA, 804-582-5120, 5) Valley Regional Office, 4411 Early Rd, Harrisonburg VA, 540-574-7800, 6) Piedmont Regional Office, 4949-A Cox Rd, Glen Allen VA, 804-527-5020, 7) Northern Regional Office, 13901 Crown Court, Woodbridge VA, 703-583-3800, and 8) Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach VA 757-518-3000.
CONTACT FOR PUBLIC COMMENTS, DOCUMENT REQUESTS AND ADDITIONAL INFORMATION: Gary Graham, Department of Environmental Quality, PO Box 1105, Richmond VA 23218 (phone 804-698-4103, fax 804-698-4510, email Gary.Graham@deq.virginia.gov).

Revision H05

VR Publication Date Final: October 8, 2012

NOTE

A copy of the proposed regulation from the February 1, 2010 Virginia Register is not being provided, as the proposed text is also contained in its entirety--even if certain sections have no post-proposal changes--in the final version of the regulation published in the October 8, 2012 Virginia Register.



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

Titles of Regulations: **9VAC5-50. New and Modified Stationary Sources (Rev. H05)** (amending 9VAC5-50-240, 9VAC5-50-250, 9VAC5-50-260).

9VAC5-80. Permits for Stationary Sources (Rev. H05) (amending 9VAC5-80-1100 through 9VAC5-80-1140, 9VAC5-80-1150 through 9VAC5-80-1220, 9VAC5-80-1240 through 9VAC5-80-1300; adding 9VAC5-80-1105, 9VAC5-80-1255; repealing 9VAC5-80-1320).

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 112, 165, 173, 182, and Title V) 40 CFR Parts 51, 61, 63, 70, and 72.

Regulations

Effective Date: November 7, 2012.

Agency Contact: Gary Graham, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4103, FAX (804) 698-4510, or email gegraham@deq.virginia.gov.

Background:

The regulation applies to the construction or reconstruction of new stationary sources or modifications (physical or operational changes) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the net emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a sourcewide perspective to determine applicability based upon the net emissions changes due to or directly resulting from the modification (physical or operational change at an existing stationary source). Procedures for making changes to permits are included. There are provisions that allow the use of a general permit. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review.

Summary:

The primary change being made to the program is to convert from a permit applicability approach for modifications that looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from new and modified emissions units. Currently, applicability is based on the net emissions increase based on all the sourcewide emissions changes due to or directly resultant from the physical or operational change. The program would base permit applicability on the emissions increases from only those emissions units that undergo a physical or operational change in the project.

Secondary changes include (i) changes to the way that BACT determinations will be made, (ii) changes to the way that NSPS-affected facilities are exempted, (iii) removal of transportable engines from a nonroad engine exclusion, (iv) resolution of conflicting exemptions for reconstructed emissions units and modified emissions units, (v) exemption of short-term testing and remediation projects and aggregation of emissions units under some other exemptions, (vi) changes to the way that replacement emissions units are exempted, (vii) changes to certain

exemption requirements for portable stationary sources, (viii) changes to the way that emission rates are calculated for certain exemptions, (ix) resolution of regulatory conflicts concerning open pit incinerators, and (x) clarification of other provisions of the minor new source review program.

Changes to the proposed regulation (i) revise the BACT definition; (ii) restore the exemption threshold for fuel burning units using natural gas; (iii) correct the fine particulate matter ($PM_{2.5}$) exemption rate threshold for projects; (iv) provide for the exemption of small farm incinerators; (v) revise the definitions of construction, major modification, major stationary source, significant, and toxic pollutant; (vi) correct the provision for construction in planned incremental phases; (vii) simplify the provisions for permit invalidation; (viii) revise the definition of emergency; and (ix) make various style, numbering, and typographical corrections.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Article 4

Standards of Performance for Stationary Sources (Rule 5-4)

9VAC5-50-240. Applicability and designation of affected facility.

A. The affected facilities ~~in~~ at stationary sources to which the provisions of this article apply are ~~facilities~~ emissions units that emit or cause air pollution ~~are~~ subject to the new source review program.

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

C. The provisions of this article apply ~~only to affected facilities subject to the new source review program~~ to any regulated air pollutant except to the extent that it is regulated under 9VAC5-60 (Hazardous Air Pollutant Sources). However, the exemption provided by this subsection does not extend to other properties of the exempted pollutants that may require regulation under 9VAC5-40 (Existing Stationary Sources) or 9VAC5-50 (New and Modified Stationary Sources).

9VAC5-50-250. Definitions.

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

B. ~~As used in this article~~ Unless otherwise required by context, all terms not defined ~~here~~ herein shall have the meanings given them in 9VAC5 Chapter 10 (9VAC5-10), ~~unless otherwise required by context~~ 9VAC5-80 (Permits for Stationary Sources), 9VAC5-10 (General Definitions), or

commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Best available control technology" or "BACT" means, as used in 9VAC5-50-260, a standard of performance an emissions limitation (including a visible emission standard) based on the maximum degree of emission reduction for any pollutant which would be emitted from any proposed a new stationary source or project which the board, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such source the new stationary source or project through the application of production processes or available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard in Article 5 (9VAC5-50-400 et seq.) of this part or Article 1 (9VAC5-60-60 et seq.) or Article 2 (9VAC5-60-90 et seq.) of Part II of ~~9VAC5 Chapter 60~~ 9VAC5-60 (Hazardous Air Pollutant Sources). If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emission standard infeasible, a design, equipment, work practice, operational standard, or combination of them, may be prescribed instead of requiring the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results. ~~In determining best available control technology for stationary sources subject to Article 6 (9VAC5 80 1100 et seq.) of Part II of 9VAC5 Chapter 80, consideration shall be given to the nature and amount of the new emissions, emission control efficiencies achieved in the industry for the source type, and the cost effectiveness of the incremental emission reduction achieved. [In determining best available control technology for stationary sources subject to Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources), consideration shall be given to the nature and amount of the emissions, emission control efficiencies achieved in the industry for the source type, total cost effectiveness, and where appropriate, the cost effectiveness of the incremental emissions reduction achieved between control alternatives.]~~

"Lowest achievable emission rate" means for any source, the more stringent rate of emissions based on the following:

1. ~~The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or~~

2. ~~The most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.~~

~~"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (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) codified in Article 6 (9VAC5 80 1100 et seq.), Article 7 (9VAC5 80 1400 et seq.), Article 8 (9VAC5 80 1605 et seq.) and Article 9 (9VAC5 80 2000 et seq.) of 9VAC5 Chapter 80.~~

9VAC5-50-260. Standard for stationary sources.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of ~~that resultant from using~~ emissions limitations representing best available control technology, as reflected in any term or condition that may be placed upon the minor NSR permit approval for the facility.

B. A new stationary source shall apply best available control technology for each regulated pollutant that it would have the potential to emit in amounts for which there would be an uncontrolled emission rate equal to or greater than the levels in 9VAC5 80 1320 C 9VAC5-80-1105 C. For a new stationary source, a permit may be issued pursuant to Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) containing such terms and conditions as may be necessary to implement a best available control technology determination for any regulated air pollutant that may be emitted from any affected emissions unit.

C. ~~A modification project shall apply best available control technology for each regulated pollutant for which it would result in a net emissions increase at the source there would be an increase in the uncontrolled emission rate equal to or greater than the levels in 9VAC5-80-1320 D as a result of physical change or change in the method of operation in the unit in the project. For a project, a permit may be issued pursuant to Article 6 (9VAC5-80-1100 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) containing such terms and conditions as may be necessary to implement a best available control technology determination~~

Regulations

for any regulated air pollutant emitted, or that may be emitted, from any affected emissions unit.

D. For the phased construction of new stationary sources or projects, the ~~determination of best available control technology BACT determination~~ shall be reviewed and modified, as appropriate, at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the new stationary source or project. At such time, the owner of the applicable stationary source or project may be required to demonstrate the adequacy of any previous ~~determination of best available control technology BACT determination~~ for the source affected emissions units.

Article 6

Permits for New and Modified Stationary Sources

9VAC5-80-1100. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to ~~the construction, reconstruction, relocation or modification of any stationary source~~ (i) the construction of any new stationary source or any project (which includes any addition or replacement of an emissions unit, any modification to an emissions unit or any combination of these changes), and (ii) the reduction of any stack outlet elevation at any stationary source.

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

C. ~~The~~ Except as provided in subdivision 3 of this subsection, the provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of ~~9VAC5-80-1320~~ 9VAC5-80-1105.

1. Exemption from the requirement to obtain a minor NSR permit ~~under this article~~ shall not relieve any owner of the responsibility to comply with any other applicable provisions of regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

2. Any stationary source, emissions unit or facility which is exempt from the provisions of this article based on the criteria in ~~9VAC5-80-1320~~ 9VAC5-80-1105 but which exceeds the applicability thresholds for any applicable emission standard in ~~9VAC5 Chapter 40 (9VAC5 40) 9VAC5-40 (Existing Stationary Sources)~~ if it were an existing source or any applicable standard of performance in ~~9VAC5 Chapter 50 (9VAC5 50) 9VAC5-50 (New and Modified Stationary Sources)~~ shall be subject to the more restrictive of the provisions of either the emission standard in ~~9VAC5 Chapter 40 (9VAC5 40) 9VAC5-40 (Existing Stationary Sources)~~ or the standard of performance in ~~9VAC5 Chapter 50 (9VAC5 50) 9VAC5-50 (New and Modified Stationary Sources)~~.

3. Any new stationary source or project that would be subject to the provisions of this article except for being exempt based on one or more of the criteria in 9VAC5-80-

1105 may opt to be subject to this article notwithstanding the exemptions in 9VAC5-80-1105. The provisions of this article shall apply to the new stationary source or project as if the applicable exemption criteria did not apply. Opting in to the minor NSR program shall not affect the applicability of such exemptions to any subsequent project.

D. ~~The~~ Except as provided in 9VAC5-80-1105 C 3 and D 3, fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article. ~~The provisions of this article do not apply to a stationary source or modification that would be subject to this article only if fugitive emissions, to the extent quantifiable, are considered in calculating the uncontrolled emissions rate of the source or net emissions increase.~~

E. ~~An affected facility subject to Article 5 (9VAC5 50 400 et seq.) of Part II of 9VAC5 Chapter 50 shall not be exempt from the provisions of this article, except where:~~

1. ~~The affected facility would be subject only to recordkeeping or reporting requirements or both under Article 5 (9VAC5 50 400 et seq.) of 9VAC5 Chapter 50;~~ ~~or~~

2. ~~The affected facility is constructed, reconstructed or modified at a stationary source which has a current permit for similar affected facilities that requires compliance with emission standards and other requirements that are not less stringent than the provisions of Article 5 (9VAC5 50 400 et seq.) of 9VAC5 Chapter 50.~~

E. Where construction of a new stationary source or a project is accomplished in contemporaneous increments that individually are not subject to approval under this article and that are not part of a program of construction of a new stationary source or project in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of any particular change under the provisions of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before commencing construction on the particular change and the date that the emissions increase from the particular change occurs.

F. 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 stationary source which, except for the pattern of ownership or development, would otherwise require a minor NSR permit.

G. No provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article.

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

1. Provisions referring to "sources," "~~new or modified sources, or both~~" or "stationary sources" are applicable to the construction, relocation, replacement, reconstruction or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of the major new source review program.

2. Provisions referring to "major stationary sources" are applicable to the construction, relocation, or reconstruction replacement of all major stationary sources subject to this article. Provisions referring to "major modifications" are applicable to major modifications of major stationary sources subject to this article.

3. In cases where the provisions of the major new source review program conflict with those of this article, the provisions of the major new source review program shall prevail.

4. Provisions referring to "state and federally enforceable" or "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a minor NSR permit designated state-only enforceable under 9VAC5-80-1120 F.

I. For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and the applicable article of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources). Implementation of the federal hazardous air pollutant new source review program shall be independent of applicability and exemption criteria of this article. Additional details may be found in subdivisions 1, 2, and 3 of this subsection. Minor NSR permits shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9VAC5-80-1150 and 9VAC5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.

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. These provisions of the

federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9VAC5 60 60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

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. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

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. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60. Any information regarding how minor NSR permits are to be issued to a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program under the provisions of this article may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. The provisions of 40 CFR 63.40 through 40 CFR 63.44 for issuing approvals to construct a new source or reconstruct a source listed in the source category schedule for standards and to construct a new major source or reconstruct a major source even if the source category is not listed in the source category schedule for standards. These provisions of the federal hazardous air pollutant new source review program shall not be implemented through this article but shall be implemented through Article 7 (9VAC5-80-1400 et seq.) of this part.

J. Unless otherwise approved by the board or prescribed in the regulations of the board, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-1160 B prior to [~~(insert the effective date of the amendment)~~ November 7, 2012,]. Any minor NSR permit applications that have not been determined to be complete as of [~~(insert the effective date of the amendment)~~ November 7, 2012,] shall be subject to the new provisions of this article.

K. The provisions of 40 CFR Parts 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources) and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

L. The provisions of 40 CFR Parts 51, 58, 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

M. Particulate matter (PM_{2.5}) emissions and particulate matter (PM₁₀) emissions shall include gaseous emissions from

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a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in minor NSR permits. Compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section.

9VAC5-80-1105. Permit exemptions.

A. The general requirements for minor NSR permit exemptions are as follows:

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section. In determining whether a source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D of this section taken as a group and under the provisions of subsections E and F of this section to be exempt from this article.

b. Vegetative waste recycling/mulching operations that do not exceed 2100 hours of operation in any 12-month consecutive period at a single stationary source. To qualify as an exemption under this subdivision, the total rated capacity of all diesel engines at the source, including portable diesel engines temporarily located at the site, may not exceed 1200 brake horsepower (output).

c. The location of a portable emissions unit at a site subject to the following conditions:

(1) Any new emissions from the portable emissions unit are secondary emissions.

(2) The portable emissions unit is either subject to (i) a minor NSR permit authorizing the emissions unit as a portable emissions unit subject to this subdivision or (ii) a general permit.

(3) The emissions of the portable emissions unit at the site would be temporary.

(4) The portable emissions unit would not undergo modification or replacement that would be subject to this article.

(5) The portable emissions unit is suitable to the area in which it is to be located.

(6) Reasonable notice is given to the board prior to locating the emissions unit to the site identifying the proposed site and the probable duration of operation at

the site. Such notice shall be provided to the board not less than 15 days prior to the date the emissions unit is to be located at the site unless a different notification schedule is previously approved by the board.

d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9VAC5-20-220.

e. The use by any existing stationary source or emissions unit of an alternative fuel or raw material, if the following conditions are met:

(1) The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

(2) The use of an alternative fuel or raw material would not be subject to review under this article as a project.

2. The provisions of this article do not apply to the following stationary sources or emissions units provided the stationary source or emissions unit is (i) exempt under the provisions of subsections E and F of this section and (ii) meets any other applicable criteria or conditions set forth in this subdivision.

a. Replacement of an emissions unit subject to the following criteria:

(1) The replacement emission unit is (i) of an equal or lesser size and (ii) of an equal or lesser rated capacity as compared to the replaced emissions unit.

(2) The replacement emissions unit is functionally equivalent to the replaced emissions unit.

(3) The replacement emissions unit does not change the basic design parameters of the process operation.

(4) The potential to emit of the replacement emissions unit does not exceed the potential to emit of the replaced emissions unit. If the replaced emissions unit is subject to terms and conditions contained in a minor NSR permit, the owner may, concurrently with the notification required in subdivision (6) of this subdivision, request a minor amendment as provided in 9VAC5-80-1280 B 4 to that permit to apply those terms and conditions to the replacement emissions unit. However, the replacement emissions unit's potential to emit is not limited for the purposes of this subdivision unless (and until) the requested minor permit amendment is granted by the board.

(5) The replaced emissions unit is either removed or permanently shut down in accordance with the provisions of 9VAC5-20-220.

(6) The owner notifies the board, in writing, of the proposed replacement at least 15 days prior to commencing construction on the replacement emissions unit. Such notification shall include the size, function, and rated capacity of the existing and replacement emissions units and the registration number of the affected stationary source.

b. A reduction in stack outlet elevation provided that the stack serves only facilities that have been previously determined to be exempt from the minor NSR program.

3. In determining whether a facility is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9VAC5-40 (Existing Stationary Sources) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.

4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the board that the facility was exempt at the time a minor NSR permit would have otherwise been required under this article.

B. Facilities as specified below shall be exempt from the provisions of this article.

1. Fuel burning equipment units (external combustion units, not engines and turbines) and space heaters in a single application as follows:

a. Except as provided in subdivision b of this subdivision, the exemption thresholds in subdivisions (1) through (4) of this subdivision shall be applied on an individual unit basis for each fuel type.

(1) Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

(2) Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(3) Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(4) Using gaseous fuel with a maximum heat input of less than [~~30,000,000~~ 50,000,000] Btu per hour.

b. In ozone nonattainment areas designated in 9VAC5-20-204 or ozone maintenance areas designated in 9VAC5-20-203, the exemption thresholds in subdivision a of this subdivision shall be applied in the aggregate for each fuel type.

2. Engines and turbines that are used for emergency purposes only and that do not individually exceed 500 hours of operation per year at a single stationary source as follows. All engines and turbines in a single application must also meet the following criteria to be exempt.

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an

aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair, or testing.

4. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations involving:

(1) Any tank of 2,000 gallons or less storage capacity; or
(2) Any operation outside the volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Volatile organic compound storage operations involving any tank of 40,000 gallons or less storage capacity.

5. Vehicle customizing coating operations, if production is less than 20 vehicles per day.

6. Vehicle refinishing operations.

7. Coating operations for the exterior of fully assembled aircraft or marine vessels.

8. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and any operation or facility specified below:

a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Gasoline dispensing facilities.

c. Gasoline bulk loading operations at bulk plants:

(1) With an expected daily throughput of less than 4,000 gallons, or

(2) Located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

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d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations involving:

(1) Any tank of 40,000 gallons or less storage capacity;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) Any tank storing waxy, heavy pour crude oil.

9. Petroleum dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9VAC5-50-410.

10. Any addition of, relocation of, or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.

12. Exhaust flares at natural gas and coalbed methane extraction wells.

13. Temporary facilities subject to the following conditions:

a. The operational period of the temporary facility (the period from the date that the first pollutant-emitting operation is commenced to the date of shutdown of the temporary facility) is 12 months or less.

b. The uncontrolled emissions rate of any regulated air pollutant that would be emitted from the temporary facility during the operational period does not exceed the applicable exempt emission rate as set forth in 9VAC5-80-1105 C (exemption rates for new stationary sources) or 9VAC5-80-1105 D (exemption rates for projects). The uncontrolled emission rate may be calculated based upon the total number of hours in the operational period instead of 8760 hours. All temporary facilities that will be co-located at a stationary source shall be considered in the aggregate when calculating the uncontrolled emissions rate under this subdivision.

c. Upon completion of the operational period, the temporary facility shall be either (i) shut down in accordance with 9VAC5-20-220 or (ii) returned to its original state and condition unless, prior to the end of the operational period, the owner demonstrates in writing to the satisfaction of the board that the facility is exempt under 9VAC5-80-1105 C (exemption rates for new stationary sources) or D (exemption rates for new stationary projects) using 8760 hours of operation per year.

d. Not less than 30 calendar days prior to commencing the operational period, the owner shall notify the board in writing of the proposed temporary facility and shall provide (i) calculations demonstrating that the temporary facility is exempt under this subdivision and under 9VAC5-80-1105 E and F and (ii) proposed dates for commencing the first pollutant-emitting operation and shutdown of the temporary facility.

e. The owner shall provide written notifications to the board of (i) the actual date of commencing the first pollutant-emitting operation and (ii) the actual date of shutdown of the temporary facility. Notifications shall be postmarked not more than 10 days after such dates.

14. Open pit incinerators subject to [~~Article 40 (9VAC5-40-5600 et seq.)~~ of Part II of 9VAC5 40 (Existing Stationary Sources) 9VAC5-130 (Regulation for Open Burning)] and used solely for the purpose of disposal of clean burning waste and debris waste.

[15. Poultry or swine incinerators located on a farm where all of the following conditions are met:

a. Auxiliary fuels for the incinerator unit shall be limited to natural gas, liquid petroleum gas, and/or distilled petroleum liquid fuel. Solid fuels, waste materials, or residual petroleum oil products shall not be used to fire the incinerator.

b. The waste incinerated shall be limited to pathological waste (poultry or swine remains). Litter and animal bedding or any other waste materials shall not be incinerated.

c. The design burn rate or capacity rate of the incinerator shall be 400 pounds per hour or less of poultry or swine. This value shall apply only to the mass of the poultry or swine and shall not include the mass of the fuel.

d. The incinerator shall be used solely to dispose of poultry or swine originating on the farm where the incinerator is located.

e. The incinerator shall be owned and operated by the owner or operator of the farm where the incinerator is located.

f. The incinerator shall not be charged beyond the manufacturer's recommended rated capacity.

g. Records shall be maintained on site to demonstrate compliance with the conditions for this exemption.

including but not limited to the total amount of pathological waste incinerated and the fuel usage on a calendar year quarterly basis.]

C. The exemption of new stationary sources shall be determined as specified below:

1. New stationary sources with uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate of a new stationary source is the sum of the uncontrolled emission rates of the individual affected emissions units. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting new stationary sources under this subsection.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Particulate Matter (PM ₁₀)	15 tpy
Particulate Matter (PM _{2.5})	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H ₂ S)	9 tpy
Total Reduced Sulfur (including H ₂ S)	9 tpy
Reduced Sulfur Compounds (including H ₂ S)	9 tpy
Municipal waste combustor organics (measured as total tetra-throughocta-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM₁₀ or PM_{2.5}) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀ or

PM_{2.5}), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM₁₀ or PM_{2.5}) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a new stationary source if all of the emissions considered in calculating the uncontrolled emission rate of the new stationary source are fugitive emissions.

D. The exemption of projects shall be determined as specified below:

1. A project that would result in increases in uncontrolled emission rates at the stationary source less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate increase of a project is the sum of the uncontrolled emission rate increases of the individual affected emissions units. Uncontrolled emissions rate decreases are not considered as part of this calculation. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting projects under this subsection.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	10 tpy
Sulfur Dioxide	10 tpy
Particulate matter	15 tpy
Particulate matter PM ₁₀	10 tpy
Particulate matter (PM _{2.5})	[5-6] tpy
Volatile organic compounds	10 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H ₂ S)	9 tpy
Total Reduced Sulfur (including H ₂ S)	9 tpy
Reduced Sulfur Compounds (including H ₂ S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy

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<u>Municipal waste combustor acid gases (measured as the sum of SO₂ and HCl)</u>	<u>35 tpy</u>
<u>Municipal solid waste landfill emissions (measured as nonmethane organic compounds)</u>	<u>22 tpy</u>

2. If the particulate matter (PM₁₀ or PM_{2.5}) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀ or PM_{2.5}), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM₁₀ or PM_{2.5}) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a project if all of the emissions considered in calculating the uncontrolled emission rate increase of the project are fugitive emissions.

40 CFR 61.07, 40 CFR 61.08, and 40 CFR 61.15 that establish the requirements 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. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61.

2. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.5 that establish the requirements 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. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 63.

3. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.50 through 40 CFR 63.56 that establish the requirements for issuing notices of MACT approval prior to the construction of a new emissions unit listed in the source category schedule for standards. Any information regarding exemptions for a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. This subdivision addresses those source categories for which EPA has promulgated a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act in the source category schedule for standards. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article.

9VAC5-80-1110. 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 terms not defined ~~here~~ herein shall have the meanings given them in ~~9VAC5-Chapter 10 (9VAC5-10)~~ 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

~~"Allowable emissions" means the emission rate of a stationary source calculated by using the maximum rated capacity of the source (unless the source is subject to state and federally enforceable limits which restrict the operating~~

F. This subsection provides information on the extent to which any source category or portion of a source category subject to the federal hazardous air pollutant new source review program may be exempt from the provisions of this article.

1. This subdivision addresses those source categories subject to the provisions of 40 CFR 61.05, 40 CFR 61.06,

rate or hours of operation, or both) and the most stringent of the following:

1. ~~Applicable emission standards;~~
2. ~~The emission limitation specified as a state and federally enforceable permit condition, including those with a future compliance date; and~~
3. ~~Any other applicable emission limitation, including those with a future compliance date.~~

"Addition" means the construction of a new emissions unit at or the relocation of an existing emissions unit to a stationary source.

"Affected emissions units" means the following emissions units, as applicable:

1. For a new stationary source, all emissions units.
2. For a project, the added, modified, and replacement emissions units that are part of the project.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units ~~in a source~~ subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

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 limit 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 pursuant to 9VAC5-80-1120 F or 9VAC5-80-820 G shall not be applicable federal requirements.
3. Any emission standard, alternative emission standard, alternative ~~emission~~ emissions limitation, equivalent ~~emission~~ 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 issued under this article.

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 this part.

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

"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. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change. With respect to the initial location or relocation of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes but is not limited to byproducts of harvesting activities conducted for forest management or commercial logging, or mill residues consisting of bark, chips, edgings, sawdust, shavings, or slabs. It does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained, or coated.

"Commence," as applied to the construction, ~~reconstruction~~ or modification of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun, or caused to begin, a continuous program of actual on-site construction, ~~reconstruction or modification~~ of the unit, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of

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actual construction, ~~reconstruction or modification~~ of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that 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.

"Construction" means fabrication, erection, installation, demolition, relocation, addition, replacement, or installation modification of an emissions unit that would result in a change in the uncontrolled emission rate.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include, but are not limited to, lumber, wire, sheetrock, broken brick, shingles, glass, pipe, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include, but are not limited to, stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures or their foundations, or both, and includes the same materials as construction wastes.

"Diesel engine" means, for the purposes of 9VAC5-80-1105 A 1 b, any internal combustion engine that burns diesel or #2 fuel oil to provide power to processing equipment for a vegetative waste recycling/mulching operation.

~~["Emergency" means, in the context of 9VAC5 80 1320 B 2 9VAC5 80 1105 B 2, 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.~~

"Emergency" means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner or operator of a facility including:

1. A failure of the electrical grid;
2. On-site disaster or equipment failure;
3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions; or
4. An ISO-declared emergency, where an ISO emergency is:
 - a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to

prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property;

b. Capacity deficiency or capacity excess conditions;

c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel;

d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state; or

e. An abnormal event external to the ISO service territory that may require ISO action.]

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions limitation" means a requirement established by the board that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique.

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

"Enforceable as a practical matter" means that the permit contains ~~emission~~ emissions 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 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 implementation plan) 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 1180 this article and other regulations of the board; and
6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Existing stationary source" means any stationary source other than a new stationary source.

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of ~~new sources or expansions to existing ones~~ the construction, reconstruction, or modification of any stationary source in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

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. ~~These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9VAC5-60-60 et seq.) of 9VAC5 Chapter 60.~~

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. ~~These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9VAC5-60-90 et seq.) of 9VAC5 Chapter 60.~~

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT ~~approval~~ Approval prior to the construction of a new emissions unit. ~~These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9VAC5-60-120 et seq.) of 9VAC5 Chapter 60.~~

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

1. Emission standards, alternative emission standards, alternative ~~emission~~ emissions limitations, and equivalent ~~emission~~ 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, ~~unless expressly designated as not federally enforceable.~~

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 the EPA ~~in accordance with 40 CFR Part 51~~ into the implementation plan.

6. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of ~~an~~ a state operating permit issued pursuant to a program approved by the EPA into an implementation plan as meeting the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability, 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 ~~Virginia~~ regulation of the board or program that has been approved by ~~the~~ EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

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

"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

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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 this part.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

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

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-1250.

"Hazardous air pollutant" means (i) any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR ~~63.60~~ Subpart C of 40 CFR Part 63, and (ii) incorporated by reference into the regulations of the board at 9VAC5-60-92 B.

["Independent system operator" or "ISO" means a person that may receive or has received by transfer pursuant to § 56-576 of the Code of Virginia any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.]

"Major modification" means any ~~modification defined as such in 9VAC5-80-1615 C or 9VAC5-80-2010 C, as may apply~~ project at a major stationary source that would result in a significant emissions increase in any regulated air pollutant. For projects, the emissions increase may take into consideration any state and federally enforceable permit conditions that [~~are in effect on the date the~~ will be placed in a permit resulting from a permit] application [~~is~~] deemed complete under the provisions of 9VAC5-80-1160 B.

"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 this part.

"Major stationary source" means any stationary source ~~which that~~ emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant. For new stationary sources, the potential to emit may take into consideration any state and federally enforceable permit conditions that [are in effect on the date the will be placed in a permit resulting from a permit] application [~~is~~] deemed complete under the provisions of 9VAC5-80-1160 B.

"Minor new source review (NSR) permit" means a permit issued pursuant to this article.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated

air pollutants from new stationary sources or ~~modifications (physical changes or changes in the method of operation) that do not qualify for~~ 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 this part~~ this article. The minor NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"Modification" means any physical change in, or change in the method of operation of, or addition to, a stationary source that would result in a net emissions increase an emissions unit that increases the uncontrolled emission rate of any regulated air pollutant emitted into the atmosphere by the ~~source unit~~ or ~~which that~~ results in the emission of any regulated air pollutant into the atmosphere not previously emitted, ~~except that the~~. The following shall not, by themselves (unless previously limited by permit conditions), be considered modifications physical changes or changes in the method of operation under this definition:

1. Maintenance, repair and replacement ~~which of~~ components that the board determines to be routine for a source type and which does not fall within the definition of "~~reconstruction~~ replacement";
2. An increase in the throughput or production rate of a unit (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter), if that increase does not exceed the operating design capacity of that unit;
3. An increase in the hours of operation (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter);
4. Use of an alternative fuel or raw material (unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter) if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the ~~source~~ emissions unit was designed to accommodate that alternative use. A ~~source~~ unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;
5. Use of an alternative fuel or raw material that the emissions unit is approved to use under any new source review permit;
6. The addition, replacement or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws ~~and, permit conditions or~~ regulations is replaced by a

system or device which the board considers to be less efficient in the control of air pollution emissions; or

~~6.~~ 7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not (i) necessary for the source to comply with any applicable air pollution control laws, permit conditions, or regulations or (ii) used to avoid any applicable new source review program requirement.

8. A change in ownership at a stationary source.

~~"Modified source" means any stationary source (or portion of it), the modification of which commenced on or after March 17, 1972.~~

~~"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations, and those air quality control laws and regulations which are the NSR program that is part of the implementation plan.~~

~~"Net emissions increase" means the amount by which the sum of the following exceeds zero: (i) any increase in the uncontrolled emission rate from a particular physical change or change in the method of operation at a stationary source and (ii) any other increases and decreases in the uncontrolled emission rate at the source that are concurrent with the particular change and are otherwise creditable. An increase or decrease in the uncontrolled emission rate is concurrent with the increase from the particular change only if it is directly resultant from the particular change. An increase or decrease in the uncontrolled emission rate is not creditable if the board has relied on it in issuing a permit for the source under the new source review program and that permit is in effect when the increase in the uncontrolled emission rate from the particular change occurs. Creditable increases and decreases shall be federally enforceable or enforceable as a practical matter.~~

~~"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972; and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.~~

"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 modifications 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) codified in ~~Article 6 (9VAC5-80-1100 et seq.)~~ this article, Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9

(9VAC5-80-2000 et seq.) of this part. The NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"New stationary source" means any stationary source to be constructed at or relocated to an undeveloped site.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or
2. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or
3. ~~That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.~~

~~An internal combustion engine is not a nonroad engine if: 1. The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under § 202 of the federal Clean Air Act; or~~

2. ~~The engine otherwise included in subdivision 3 above remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.~~

~~For purposes of this definition, a location is any single site at a building, structure, facility or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at the single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.~~

"Plantwide applicability limitation (PAL)" means an emissions limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865 or 9VAC5-80-2144.

"PAL permit" means the state operating permit issued by the board that establishes a PAL for a major stationary source.

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle.

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Indications of portability include, but are not limited to, wheels, skids, carrying handles, ~~dollies~~ dolly, ~~trailers~~ trailer, or ~~platforms~~ platform.

"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. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Precursor pollutant" means the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone.

(2) Sulfur dioxide is a precursor to PM_{2.5}.

(3) Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5}, unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations.

(4) Volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5}, unless the board determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations.

"Process operation" means any method, form, action, operation, or treatment of manufacturing or processing, including any storage or handling of materials or products before, during, or after manufacturing or processing.

"Project" means any change at an existing stationary source consisting of the addition, replacement, or modification of one or more emissions units.

"Public comment period" means a time during which the public shall have the opportunity to comment on the ~~new or modified source~~ 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.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" means, for the sole purposes of 9VAC5-80-1210 A, B, and C, the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;
2. The replacement significantly extends the life of the emissions unit; and


3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the board as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;
2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;
3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and
4. Any economic or technical limitations on compliance with applicable standards of performance ~~which that~~ are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound;
2. Any pollutant (including any associated precursor pollutant) for which an ambient air quality standard has been promulgated;
3. Any pollutant subject to any standard promulgated under ~~§ 111 of the federal Clean Air Act;~~ 40 CFR Part 60.
4. Any pollutant subject to a standard promulgated under or other requirements established under ~~§ 112 of the federal Clean Air Act concerning hazardous air pollutants~~ 40 CFR Part 61 and any pollutant regulated under 40 CFR Part 63; ~~or.~~


"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Replacement" means the substitution of an emissions unit for an emissions unit located at a stationary source, which will thereafter perform the same function as the replaced emissions unit.

"Secondary emissions" means emissions which occur or would occur as a result of the construction, ~~reconstruction,~~ ~~modification~~ or operation of a new stationary source or an emissions unit, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must affect the same general areas as the stationary source ~~which that~~ causes the secondary emissions. Secondary emissions include emissions from any off site support facility ~~which that~~ would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source or emissions unit. Secondary emissions do not include any emissions ~~which that~~ come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

[~~a~~. 1.] In reference to an emissions increase, an increase in potential to emit that would equal or exceed any of the following rates:

[a. In ozone nonattainment areas classified as serious or severe in 9VAC5-20-204:]

Pollutant	Emissions Rate
<u>Carbon Monoxide</u>	<u>100 tons per year (tpy)</u>
<u>Nitrogen Oxides</u>	[40 25] tpy
<u>Sulfur Dioxide</u>	<u>40 tpy</u>
<u>Particulate Matter (PM)</u>	<u>25 tpy</u>
<u>Particulate Matter (PM₁₀)</u>	<u>15 tpy</u>
<u>Particulate Matter (PM_{2.5})</u>	<u>10 tpy</u>
<u>Volatile organic compounds</u>	<u>25 tpy</u>
<u>Lead</u>	<u>0.6 tpy</u>

[b. In all other areas:

Pollutant	Emissions Rate
<u>Carbon Monoxide</u>	<u>100 tons per year (tpy)</u>
<u>Nitrogen Oxides</u>	<u>40 tpy</u>
<u>Sulfur Dioxide</u>	<u>40 tpy</u>
<u>Particulate Matter (PM)</u>	<u>25 tpy</u>
<u>Particulate Matter (PM₁₀)</u>	<u>15 tpy</u>
<u>Particulate Matter (PM_{2.5})</u>	<u>10 tpy</u>
<u>Volatile organic compounds</u>	<u>40 tpy</u>
<u>Lead</u>	<u>0.6 tpy]</u>

[~~b~~. 2.] In reference to an emissions increase for a regulated air pollutant not listed in subdivision [~~a~~ 1] of this definition, there is no emissions rate that shall be considered significant.

[~~c~~. 3.] If the particulate matter (PM₁₀ or PM_{2.5}) emissions for a stationary source or emissions unit can be determined in a manner acceptable to the board and the emissions increase is determined to be significant using the emission rate for particulate matter (PM₁₀ or PM_{2.5}), the stationary source or emissions unit shall be considered to be

significant for particulate matter (PM). If the emissions of particulate matter (PM₁₀ or PM_{2.5}) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter (PM) shall be used to determine whether the emissions increase is significant.

"Significant emissions increase" means, for a regulated air pollutant, an increase in emissions that is significant for that pollutant.

"Site" means one or more contiguous or adjacent properties under the control of the same person (or persons under common control).

"Source category schedule for standards" means the schedule (i) issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and (ii) incorporated by reference into the regulations of the board in subdivision 2 of 9VAC5-60-92.

"Space heater" means any fixed or portable, liquid or gaseous fuel-fired, combustion unit used to heat air in a space, or used to heat air entering a space, for the purpose of maintaining an air temperature suitable for comfort, storage, or equipment operation. Space heaters do not include combustion units used primarily for the purpose of conditioning or processing raw materials or product, such as driers, kilns, or ovens.

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

"State operating permit" 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 this part.

"Stationary source" means any building, structure, facility or installation which that emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any watercraft or any nonroad engine. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which that have the same two-digit code) as described in

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the "Standard Industrial Classification Manual," ~~as amended by the supplement~~ (see 9VAC5-20-21).

~~"Synthetic minor source" means a stationary source whose potential to emit is constrained by state enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act that otherwise has the potential to emit regulated air pollutants in amounts that are at or above those for major stationary sources, as applicable, but [that has taken a restriction so is subject to restrictions such] that its potential to emit is less than such amounts for major stationary sources. Such restrictions must be enforceable as a practical matter. The term "synthetic minor source" applies independently for each regulated air pollutant that the source has the potential to emit.~~

"Temporary facility" means a facility that (i) is operated to achieve a specific objective (such as serving as a pilot test facility, a process feasibility project, or a remediation project) and (ii) does not contribute toward the commercial production of any product or service (including byproduct and intermediate product) during the operational period. Portable emissions units covered by the exemption under 9VAC5-80-1105 A 1 c and facilities used to augment or enable routine production are not considered temporary facilities for the purposes of this definition.



"Uncontrolled emission rate" means the emission rate from an emissions unit when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment that is not vital to its operation, except that its use enables the owner to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the emissions unit, unless the emissions unit or stationary source is subject to state and federally enforceable permit conditions that limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted, stored, or processed may be used in determining the uncontrolled emission rate of an emissions unit or stationary source. The uncontrolled emission rate of a stationary source is the sum of the uncontrolled emission rates of the individual emissions units. Secondary emissions

do not count in determining the uncontrolled emission rate of a stationary source.

"Undeveloped site" means any site or facility at which no emissions units are located at the time the permit application is deemed complete, or at the time the owner begins actual construction, whichever occurs first. An undeveloped site also includes any site or facility at which all of the emissions units have been determined to be shut down pursuant to the provisions of 9VAC5-20-220.

"Vegetative waste" means decomposable materials generated by land clearing activities and includes shrub, bush and tree prunings, bark, brush, leaves, limbs, roots, and stumps. Vegetative waste does not include construction or demolition waste or any combination of them.

"Vegetative waste recycling/mulching operation" means any activity related to size reduction or separating, or both, of clean wood or vegetative waste, or both, by grinding, shredding, chipping, screening, or any combination of them.

9VAC5-80-1120. General.

A. ~~No owner or other person shall begin actual construction, reconstruction or modification of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit to construct and operate or to modify and operate the source under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.~~

B. ~~Except as provided in 9VAC5-80-1320~~ 9VAC5-80-1105 A 1 c, no owner or other person shall relocate any stationary source or emissions unit from one stationary source to another without first obtaining from the board a minor NSR permit to relocate the stationary source or unit.

C. ~~No~~ Except as provided in 9VAC5-80-1105 A 2 b, no owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any regulated air pollutant from an ~~affected facility~~ emissions unit without first obtaining a minor NSR permit from the board.

D. ~~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. The board will take actions to combine permit terms and conditions as provided in 9VAC5-80-1255. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-1260 as explained in subsection E of this section.~~

E. The board may incorporate the terms and conditions of a state operating permit into a permit issued pursuant to this article. The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed. The board may incorporate the terms and conditions of a permit issued pursuant to this article into a state operating permit provided all of the permitted emissions units are operational and determined to be in compliance in accordance with 9VAC5-80-1200. The board will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1260. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection D of this section.

F. All terms and conditions of any minor NSR permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any minor NSR permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of 9VAC5 Chapter 40 Part II of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of 9VAC5 Chapter 50 Part II of 9VAC5-50 (New and Modified Stationary Sources), or Article 4 (9VAC5-60-200 et seq.) or Article 5 (9VAC5-60-300 et seq.) of 9VAC5 Chapter 60 Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any minor NSR permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall ~~only~~ be enforceable only by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

G. Nothing in the regulations of the board shall be construed to prevent the board from granting minor NSR permits for programs of construction or modification of a new stationary source or project in planned incremental phases. In such cases, all [~~net emissions~~ uncontrolled emission rate] increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

H. ~~For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and the applicable article of 9VAC5 Chapter 60 (9VAC5-60). Permits issued under this article shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air~~

~~pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9VAC5-80-1150 and 9VAC5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.~~

9VAC5-80-1140. Applications.

A. A single application is required identifying at a minimum each emissions unit ~~subject to the provisions of this article~~ in the new stationary source or the project, or affected by the stack outlet elevation reduction. The application shall be submitted according to procedures acceptable to 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 new stationary source or project.

C. For new stationary sources or for projects with phased development, a single application should be submitted covering the entire new stationary source or project.

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

E. Any application submitted pursuant to this article shall contain a certification signed by the applicant as follows:

"I certify that I understand that the existence of a minor new source review permit under this article does not shield the source from potential enforcement of any regulation of the board governing the major new source review program and does not relieve the source of the responsibility to comply with any applicable provision of the major NSR new source review program regulations."

9VAC5-80-1150. Application information required.

A. The board shall furnish application forms to applicants. Completion of these forms serves as initial registration of ~~new and modified~~ stationary sources and emissions units subject to this article.

B. Each application for a minor NSR permit shall include such information as may be required by the board to determine the effect of the ~~proposed~~ new stationary source or emissions unit on the ambient air quality and to determine compliance with the any emission standards which are applicable. The information required shall include, but is not limited to, the following:

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

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated air pollutants.

a. A minor NSR permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit or group of emissions units ~~to be covered by the permit in the new stationary source or project or affected by the stack outlet elevation reduction. The permit application shall include a description of all changes in uncontrolled emissions from the project.~~

b. Emissions shall be calculated as required in the minor NSR permit application form or instructions or in a manner acceptable to the board.

c. Fugitive emissions shall be included in the minor NSR permit application to the extent quantifiable.

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

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

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

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

8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the new stationary source or emissions unit the project, or the stack outlet elevation reduction, including the submission of measured air quality data at the proposed site prior to construction, ~~reconstruction or modification~~. Such measurements shall be accomplished using procedures acceptable to the board.

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

9VAC5-80-1160. Action on permit application.

A. Prior to submitting an application for processing under subsections B through F of this section, the owner may request a nonbinding applicability determination as to which particular provisions of the new source review program are applicable. The request for the applicability determination

shall include sufficient information as may be necessary for the board to make an applicability determination and may include the same information required for an application. Within 30 days after receipt of a request, the board will (i) notify the applicant of the applicability determination or (ii) provide a determination that the information provided by the owner is insufficient to make an applicability determination, along with the identification of any deficiencies.

B. Within 30 days after receipt of an application, the board will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the board in writing and will 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 will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection ~~B~~ C of this section shall be the date on which the board received all required information, including any applicable permit fees, and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

~~B~~ C. The board will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for these steps is normally 90 days following receipt of a complete application. If a public hearing is required, processing time is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is needed.

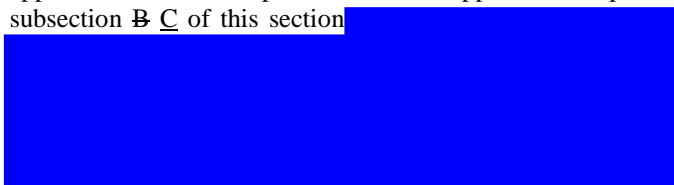
1. Complete the preliminary review and analysis in accordance with 9VAC5-80-1190 and the preliminary determination of the board. This step may constitute the final step if the provisions of 9VAC5-80-1170 concerning public participation are not applicable.

2. When required, complete the public participation requirements in accordance with 9VAC5-80-1170.

3. Consider the public comments received in accordance with 9VAC5-80-1170.

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

~~C~~ D. The board will normally take final action on an application after completion of the applicable steps in subsection ~~B~~ C of this section



~~D. E.~~ The board shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission ~~limitations standards~~. These emission ~~limitations standards~~ are applicable during any emission testing conducted in accordance with 9VAC5-80-1200.

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

~~F. G.~~ Within five days after notification to the applicant pursuant to subsection ~~E~~ 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 9VAC5-80-1170 E 1.

9VAC5-80-1170. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1160 ~~A B~~, the applicant for a minor NSR permit for a new major stationary source ~~or a major modification~~ shall notify the public of the proposed major stationary source ~~or major modification~~ in accordance with subsection B of this section.

B. The public notice required by subsection A of 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 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; and
4. The name and telephone number of a contact person, employed by the applicant, who can answer questions about the proposed source.

C. Upon a determination by the board that it will achieve the desired results in an equally effective manner, an applicant for a minor NSR permit may implement an alternative plan for notifying the public to that required in subsections A and B of this section.

D. Prior to the decision of the board, minor NSR permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection E of this section.

1. Applications for stationary sources of hazardous air pollutants requiring a case-by-case maximum achievable control technology determination under Article 3 (9VAC5-60-120 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Applications for new major stationary sources and major modifications.

3. Applications for projects that would result in an increase in the potential to emit of any regulated air pollutant that would equal or exceed 100 tons per year, considering any state and federally enforceable permit conditions that will be placed on the source by a minor NSR permit.

4. Applications for new stationary sources ~~which or projects that~~ have the potential for public interest concerning air quality issues, as determined by the board ~~in its discretion~~. The identification of such sources ~~may shall~~ be made using the following nonexclusive criteria:

- a. Whether the new stationary source or project is opposed by any person;
- b. Whether the new stationary source or project has resulted in adverse media;
- c. Whether the new stationary source or project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and
- d. Whether the new stationary source or project has generated adverse comment by a local official, governing body or advisory board.

~~4. 5.~~ Applications for stationary sources for which any provision of the minor NSR permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by subdivisions 1 and 2 of the GEP definition. The demonstration specified in subdivision 3 of the GEP definition ~~must be available during the public comment period and required by 9VAC5-50-20 H 3 shall be included in the application.~~

E. When a public comment period and public hearing are required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, 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. For permits subject to § 10.1-1307.01 of the Code of Virginia, 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 minor NSR 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 air quality control region. Any demonstration included in an application specified in subdivision D 5 of this section shall be available for public inspection during the public comment period.

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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 administrator, U.S. Environmental Protection Agency.


3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.



H. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the board shall process the minor NSR 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.

9VAC5-80-1180. Standards and conditions for granting permits.

A. No minor NSR permit will be granted ~~pursuant to this article~~ unless it is shown to the satisfaction of the board that the source will comply with the following standards:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under ~~9VAC5 Chapter 50 (9VAC5 50 10 et seq.)~~ 9VAC5-50 (New and Modified Stationary Sources) 

2. For sources subject to the federal hazardous air pollutant new source review program, the source shall be designed, built, and equipped to comply with the applicable emission standard and other requirements prescribed in 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), as applicable;

3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and

4. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.

B. ~~Permits~~ Minor NSR permits may be granted to stationary sources or emissions units that contain emission caps provided the caps are made enforceable as a practical matter using the elements set forth in subsection D of this section. The emission caps may be considered in determining whether a stationary source is a synthetic minor source.

C. ~~Permits granted pursuant to this article~~ Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include limits on 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. The standard may prescribe, as an alternative to or a supplement to ~~an emission limitation~~ a limit prescribed under subdivision 1 of this subsection, ~~an~~ equipment, work practice, fuels specification, process materials, maintenance, or operational ~~standard~~ standards, or any combination of them.

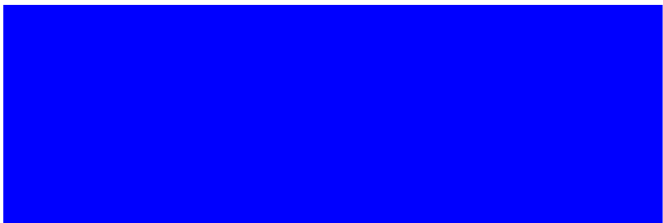
D. ~~Permits issued under this article~~ Minor NSR permits will contain, but need not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.
2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:
 - a. ~~Limit~~ Limits on fuel sulfur content.
 - b. ~~Limit~~ Limits on production rates with time frames as appropriate to support the emission standards.
 - c. ~~Limit~~ Limits on raw material usage rate.
 - d. 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. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.
4. Specifications for air pollution control equipment installed or to be installed. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.
5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but need 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~~ Performance 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.

9VAC5-80-1190. Application review and analysis.

No minor NSR permit shall be granted ~~pursuant to this article~~ unless compliance with the standards in 9VAC5-80-1180 is demonstrated to the satisfaction of the board by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications for new stationary sources and projects shall be subject to the following review and analysis:
 - a. A control technology review to determine if the ~~source~~ emissions units will be designed, built and equipped to comply with all applicable standards of performance prescribed under ~~9VAC5 Chapter 50 (9VAC5 50 10 et seq.)~~ 9VAC5-50 (New and Modified Stationary Sources).
 - b. An air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the board.



3. Applications under 9VAC5-80-1120 C (concerning stack outlet elevation reduction) shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions as may be deemed appropriate by the board.
4. Applications for sources subject to the federal hazardous air pollutant new source review program shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

9VAC5-80-1200. Compliance determination and verification by performance testing.

A. For stationary sources other than those specified in subsection B of this section, compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.



C. Testing required by subsections A and B of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the ~~new or modified~~ source will be operated, but not later than 180 days

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after initial startup of the source; and 60 days thereafter the board shall be provided by the owner with one or, upon request, more copies of a written report of the results of the tests.

D. For sources subject to the provisions of 40 CFR Part 60, 61 or 63, the compliance determination and performance test requirements of subsections A, B and C of this section shall be met as specified in those parts of Title 40 of the Code of Federal Regulations.

E. For sources other than those specified in subsection D of this section, the requirements of subsections A, B and C 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 modified~~ 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. The granting of a waiver does not obligate the board to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

G. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirement of the implementation plan, or any other applicable federal requirement promulgated under the federal Clean Air Act.

9VAC5-80-1210. Permit invalidation, suspension, revocation and enforcement.

A. In addition to the sources subject to this article, the provisions of this section shall apply to sources specified below:

1. Any stationary source (or portion of it), the construction, modification, or relocation of which commenced on or after March 17, 1972.
2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

B. A minor NSR permit granted pursuant to this article shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within [~~the~~

~~latest of the following time frames: 1. Eighteen] months from the date the minor NSR permit is granted [~~;~~]~~

~~[2. Nine months from the date of the issuance of the last permit or other authorization (other than minor NSR 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 minor NSR permits) granted pursuant to this article).]~~

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

~~C. D.~~ The board may extend the periods prescribed in subsections ~~A B~~ and ~~B C~~ of this section 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 using the procedures for minor amendments in 9VAC5-80-1280.

~~D. E.~~ Any owner who constructs or operates a ~~new or modified~~ source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a ~~new or modified~~ source subject to this article section 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~~ F. Minor NSR permits 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 of the board.

~~F. G.~~ The board may revoke any minor NSR 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. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or ~~emission~~

emissions limitations, in the implementation plan in effect at the time that an application is submitted; or

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

~~G.~~ H. The board may suspend, under such conditions and for such period of time as the board may prescribe, any minor NSR permit for any of the grounds for revocation contained in subsection ~~F~~ G of this section or for any other violations of the regulations of the board.

~~H.~~ I. The permittee shall comply with all terms and conditions of the minor NSR permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation.

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

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

~~K.~~ 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 minor NSR permit is invalid or revoked prior to any final decision rendered under subsection ~~J~~ K of this section.

~~L.~~ M. Nothing in the regulations of the board shall be construed to prevent the board and the owner from making a mutual determination that a minor NSR 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.

~~M.~~ N. Except with respect to minor NSR permits issued in accordance with Article 3 (9VAC5-60-120 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), the provisions of subsections ~~A, B and C~~ B, C, and D shall not apply to sources subject to the federal hazardous air pollutant new source review program.

9VAC5-80-1220. Existence of permit no defense.

The existence of a minor NSR 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.

9VAC5-80-1240. Transfer of permits.

A. No person shall transfer a minor NSR 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 minor NSR 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 minor NSR 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.

D. The provisions of this section concerning the transfer of a minor NSR permit from one location to another shall not apply to the relocation of portable ~~emission~~ emissions units that are exempt from the provisions of this article by ~~9VAC5-80-1320 A 1 e~~ 9VAC5-80-1105 A 1 c.

E. The provisions of this section concerning the transfer of a minor NSR permit from one piece of equipment to another shall not apply to the replacement of an emissions unit that is exempt from the provisions of this article by 9VAC5-80-1105 A 2 a.

9VAC5-80-1250. General permits.

A. The requirements for issuance of a general permit are as follows:

1. The board may issue a general permit covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:
 - a. All stationary sources or emissions units in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.
 - b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.
 - c. Stationary sources or emissions units shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.
2. Stationary sources or emissions units operating under the authority of a general permit shall comply with all requirements applicable to other permits issued under this article.
3. General permits shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.
4. General permits shall be issued in accordance with § 2.2-4006 A [~~9~~ 8] of the Administrative Process Act.
5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:

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

b. The criteria to be used in determining which stationary sources or emissions units qualify for coverage under the general permit;

c. A brief description of the stationary source or emissions unit category that the department believes qualifies for coverage under the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category;

d. A brief description of the application process to be used by owners of stationary sources or emissions units to request coverage under the general permit; and

e. A brief description of the public comment procedures.

B. The requirements for application for coverage under a general permit are as follows:

1. Stationary sources or emissions units which qualify for coverage under a general permit may apply to the board for coverage under the terms of the general permit. Stationary sources or emissions units that do not qualify for coverage under a general permit shall apply for a minor NSR permit issued under the other provisions of this article.

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

3. Stationary sources or emissions units that qualify for coverage under the general permit after coverage is granted to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall grant authority to operate under the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.

C. The requirements for granting authority to operate under a general permit are as follows:

1. The board shall grant authority to operate under the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.

2. Granting authority to operate under a general permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-1170.

3. A response to each general permit application may be provided at the discretion of the board. The general permit

may specify a reasonable time period after which the owner of a stationary source or emissions unit that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Stationary sources or emissions units authorized to operate under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is authorized to operate under the general permit.

5. The general permit shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. The stationary source or emissions unit shall be subject to enforcement action under 9VAC5-80-1210 for operation without a minor NSR permit issued under this article if the stationary source or emissions unit is later determined by the board not to qualify for the conditions and terms of the general permit.

9VAC5-80-1255. Actions to combine permit terms and conditions.

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the board may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the board.

3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

B. The board may take actions to combine the terms and conditions of state operating permits and new source review permits, along with any changes to state operating permits and new source review permits.

C. If the board and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the board may take an action to combine the terms and conditions of permits for

emissions units within a stationary source into one or more permits. Likewise the board may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.

4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:

a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term

or condition that is retained in the combined permit shall be federally and state enforceable.

b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.

c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

9VAC5-80-1260. ~~Changes to~~ Actions to change permits.

A. The general requirements for ~~making actions to make~~ changes to minor NSR permits are as follows:

1. ~~Changes~~ Except as provided in subdivision 3 of this subsection, changes to a minor NSR permit ~~issued under this article~~ shall be made as specified under subsections B and C of this section and 9VAC5-80-1270 through 9VAC5-80-1300.

2. Changes to a minor NSR 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 minor NSR permit ~~issued under this article~~ and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

4. This section shall not be applicable to general permits.

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

1. The permittee may initiate a change to a minor NSR 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~~ changes can be found in 9VAC5-80-1270 through 9VAC5-80-1290.

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 minor NSR permit through the use of permit reopenings as specified in 9VAC5-80-1300.

9VAC5-80-1270. Administrative permit amendments.

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

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

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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 9VAC5-80-1240 have been fulfilled.

~~4. The combining of permits under the new source review program as provided in 9VAC5-80-1120 D.~~

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 will incorporate the changes without providing notice to the public under 9VAC5-80-1170 and designate in the permit amendment that such permit revisions have 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.

9VAC5-80-1280. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement~~s~~.

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~~s~~.

3. Do not require or change a case-by-case determination of an ~~emission~~ emissions limitation or other ~~standard~~ requirement.

4. ~~Do~~ Except as provided in subdivision C 2 of this section, 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 under project subject to~~ the new source review program or as a modification under § 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~~s~~.

5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act~~, and that would otherwise require a permit under the new source review program.~~

6. Are not required to be processed as a significant amendment under 9VAC5-80-1290 or as an administrative permit amendment under 9VAC5-80-1270.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve 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.

2. Require new or more frequent monitoring or reporting by the permittee or a reduction in the level of an emissions cap.

3. Designate any minor NSR permit term or ~~permit~~ condition that meets the criteria in 9VAC5-80-1120 F 1 ~~(4)~~ as state-only enforceable as provided in 9VAC5-80-1120 F 2 for any minor NSR permit issued under this article or any repealed or amended regulation from which this article is derived.

4. Apply any minor NSR permit term or condition that is applicable to an existing emissions unit to its replacement emissions unit that otherwise meets the requirements for exemption from the minor new source review permit program requirements under the provisions of 9VAC5-80-1105 A 2 a.

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

1. In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated air pollutant.

2. Any emissions cap contained in the permit shall be adjusted downward appropriately so that the emissions unit's potential to emit does not reflect any compound no longer considered a regulated air pollutant.

D. A request for the use of minor permit amendment procedures shall include ~~all of the following~~: 1. A 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,~~ accompanied by a request that such procedures be used. The applicant may, at

the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-1170 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 will 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 follows:

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 1 of this subsection 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~~ amendment.
3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify if the applicant has submitted a suggested proposed permit amendment pursuant to subsection D of this section. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

9VAC5-80-1290. 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 9VAC5-80-1280 or as administrative amendments under 9VAC5-80-1270.
2. Significant amendment procedures shall be used for those permit amendments that meet any one of the following criteria:
 - 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~~ emissions limitation or other ~~standard~~ requirement.

c. Seek to establish or change a minor NSR 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 under project subject to~~ the new source review program or as a modification under § 112 of the federal Clean Air Act; and
- (2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

3. Significant amendment procedures may not be used to bypass the public participation requirements in 9VAC5-80-1170 for an application for a project that would be subject to the minor 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~~ At the discretion of the board, the provisions of 9VAC5-80-1170 D and E shall apply to requests made under this section if the ~~permit is for a stationary source~~ emissions unit subject to the request under this section was subject to review in any previous permit application that was subject to 9VAC5-80-1170.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public hearing is required, processing time for a permit amendment is normally 180 days following receipt of a complete request except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25. The board may extend this time period if additional information is needed.

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.

9VAC5-80-1300. Reopening for cause.

A. A minor NSR permit may be reopened and ~~amended~~ revised under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions 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

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requirements or that the terms and 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 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a minor NSR 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.

9VAC5-80-1320. Permit exemption levels. (Repealed.)

A. The general requirements for permit exemption levels are as follows:

~~1. The provisions of this article do not apply to the following stationary sources or emissions units:~~

~~a. The construction, reconstruction, relocation or modification of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section.~~

~~b. The reconstruction of any stationary source or emissions unit if the potential to emit resulting from the reconstruction will not increase.~~

~~c. The relocation of a portable emissions unit provided that:~~

~~(1) The new emissions from the portable emissions unit are secondary emissions;~~

~~(2) The portable emissions unit has previously been permitted or is subject to a general permit;~~

~~(3) The unit would not undergo modification or reconstruction;~~

~~(4) The unit is suitable to the area in which it is to be located; and~~

~~(5) Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 15 days in advance of the proposed relocation unless a different time duration is previously approved by the board.~~

~~d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9VAC5-20-220.~~

~~e. The use by any source of an alternative fuel or raw material, if the following conditions are met:~~

~~(1) The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or~~

~~other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.~~

~~(2) The use of an alternative fuel or raw material would not be subject to review under this article as a modification.~~

~~2. In determining whether a facility source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D taken as a group and under the provisions of subsection E or F to be exempt from this article.~~

~~3. In determining whether a facility is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9VAC5 Chapter 40 (9VAC5-40-10 et seq.) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the board.~~

~~4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the board that the facility was exempt at the time a permit would have otherwise been required under this article.~~

B. Facilities as specified below shall be exempt from the provisions of this article as they pertain to construction, modification, reconstruction or relocation.

~~1. Fuel burning equipment units (external combustion units, not engines and turbines) as follows:~~

~~a. Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.~~

~~b. Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.~~

~~c. Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.~~

~~d. Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour.~~

~~2. Engines and turbines used for emergency purposes only and which do not exceed 500 hours of operation per year at a single stationary source as follows:~~

~~a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.~~

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

e. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair or testing.

4. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations involving:

(1) Any tank of 2,000 gallons or less storage capacity; or

(2) Any operation outside the volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Volatile organic compound storage operations involving any tank of 40,000 gallons or less storage capacity.

5. Vehicle customizing coating operations, if production is less than 20 vehicles per day.

6. Vehicle refinishing operations.

7. Coating operations for the exterior of fully assembled aircraft or marine vessels.

8. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and any operation or facility specified below:

a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Gasoline dispensing facilities.

e. Gasoline bulk loading operations at bulk plants:

(1) With an expected daily throughput of less than 4,000 gallons; or

(2) Located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the

same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations involving:

(1) Any tank of 40,000 gallons or less storage capacity;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) Any tank storing waxy, heavy pour crude oil.

9. Petroleum dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9VAC5-50-410.

10. Any addition of, relocation of or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.

12. Exhaust flares at natural gas and coalbed methane extraction wells.

C. The exemption of new and relocated sources shall be determined as specified below:

1. Stationary sources with a potential to emit at rates less than all of the emission rates specified below shall be exempt from the provisions of this article pertaining to construction or relocation.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Particulate Matter (PM ₁₀)	15 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy
Fluorides	3 tpy

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Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H ₂ S)	9 tpy
Total Reduced Sulfur (including H ₂ S)	9 tpy
Reduced Sulfur Compounds (including H ₂ S)	9 tpy
Municipal waste combustor organics (measured as total tetra through octa chlorinated dibenzo p dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. Facilities exempted by subsection B of this section shall not be included in the determination of potential to emit of a stationary source for purposes of exempting sources under this subsection.

3. If the particulate matter (PM₁₀) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀), the stationary source shall be considered to be exempt for particulate matter. If the emissions of particulate matter (PM₁₀) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter shall be used to determine the exemption status.

D. The exemption of modified and reconstructed sources shall be determined as specified below:

1. Stationary sources with net emissions increases less than all of the emission rates specified below shall be exempt from the provisions of this article pertaining to modification or reconstruction.

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	10 tpy
Sulfur Dioxide	10 tpy
Particulate Matter	15 tpy

Particulate Matter (PM ₁₀)	10 tpy
Volatile organic compounds	10 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H ₂ S)	9 tpy
Total Reduced Sulfur (including H ₂ S)	9 tpy
Reduced Sulfur Compounds (including H ₂ S)	9 tpy
Municipal waste combustor organics (measured as total tetra through octa chlorinated dibenzo p dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO ₂ and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. Facilities exempted by subsection B of this section shall not be included in the determination of net emissions increase of a stationary source for purposes of exempting sources under this subsection. However, any other increases and decreases in the uncontrolled emission rate at the source that are concurrent with a particular change shall be included in the determination of net emissions increase of a stationary source for purposes of exempting sources under this subsection, and if the change is not exempt, the other increases shall be subject to 9VAC5-50-260 C.

3. If the particulate matter (PM₁₀) emissions for a stationary source can be determined in a manner acceptable to the board and the stationary source is deemed exempt using the emission rate for particulate matter (PM₁₀), the stationary source shall be considered to be exempt for particulate matter. If the emissions of particulate matter (PM₁₀) cannot be determined in a manner acceptable to the board, the emission rate for particulate matter shall be used to determine the exemption status.

E. Exemptions for stationary sources of toxic pollutants not subject to the federal hazardous air pollutant new source review program shall be as follows:

~~1. Stationary sources exempt from the requirements of Article 5 (9VAC5-60-300 et seq.) of 9VAC5 Chapter 60 as provided in 9VAC5-60-300 C 1, C 2, D or E shall be exempt from the provisions of this article.~~

~~2. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the provisions of this article.~~

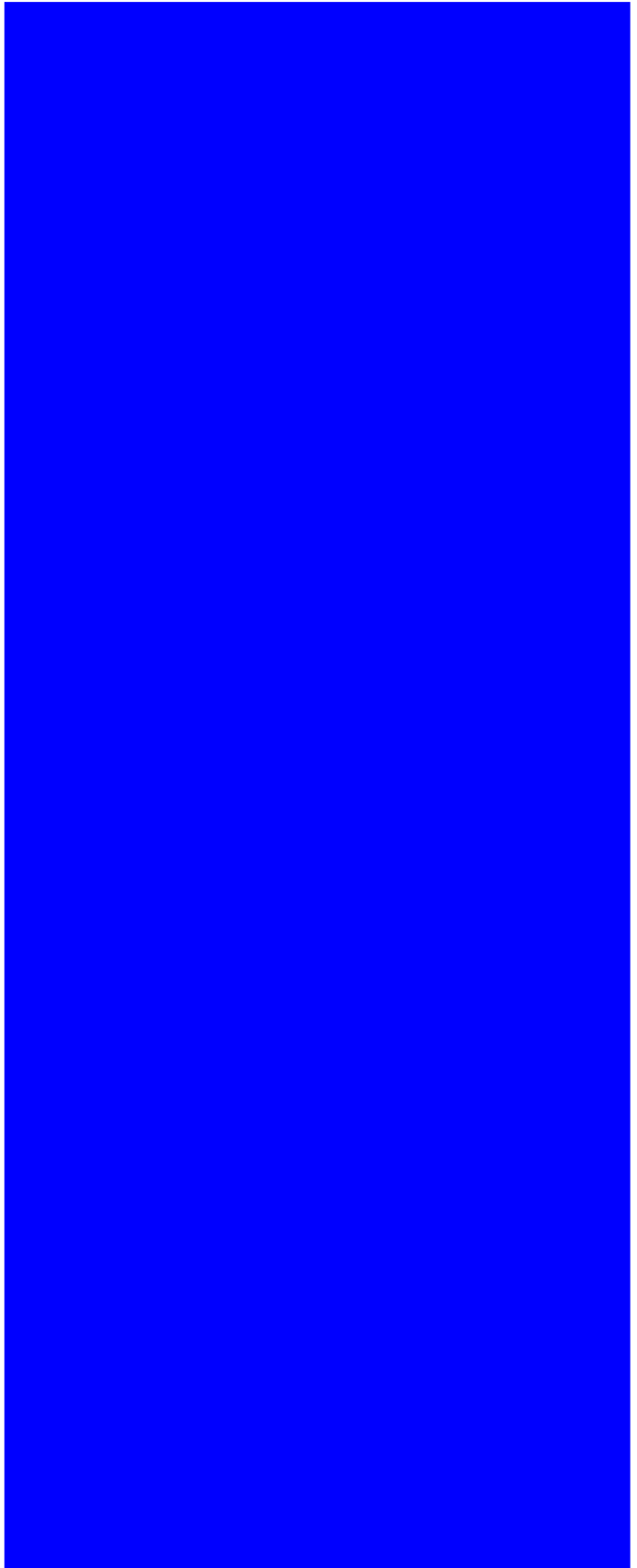
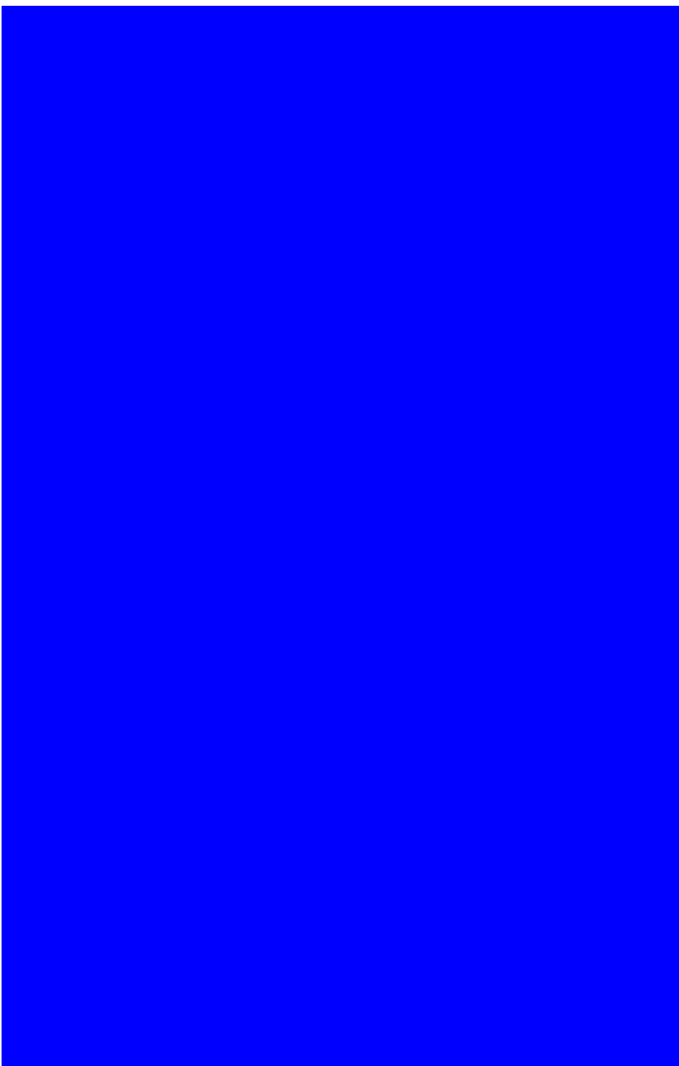
~~a. Incinerators, unless the incinerator is used exclusively as air pollution control equipment.~~

~~b. Ethylene oxide sterilizers.~~

~~c. Boilers, incinerators, or industrial furnaces as defined in 40 CFR 260.10 and subject to 9VAC20 Chapter 60 (9VAC20-60).~~

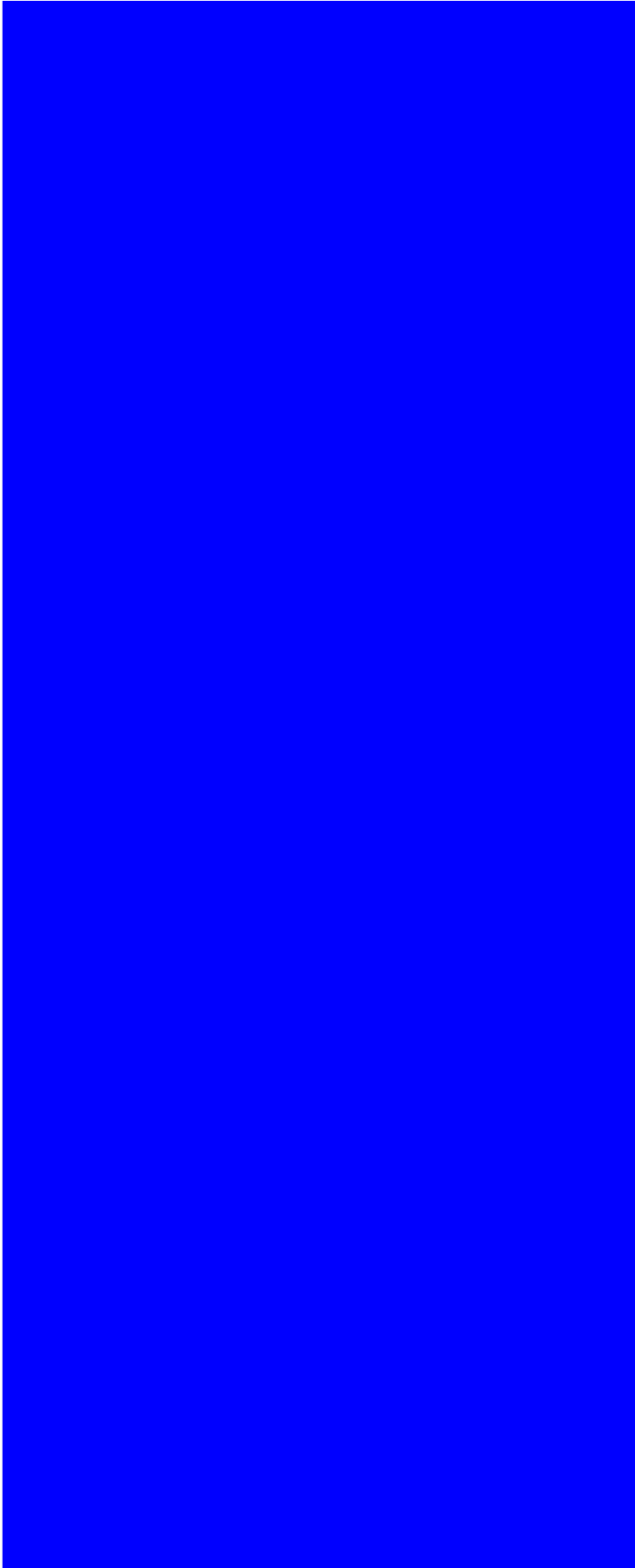
~~F. Any source category or portion of a source category subject to the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61 or 63.~~

VA.R. Doc. No. R06-106; Filed September 12, 2012; 11:29 a.m.



Revision YY

VR Publication Date Final: June 17, 2002



TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Title of Regulations: **Regulations for the Control and Abatement of Air Pollution (Revision YY).**

9 VAC 5-50. New and Modified Stationary Sources (amending [redacted] 9 VAC 5-50-390).

9 VAC 5-80. Permits for Stationary Sources (adding Article 6 [redacted] repealing 9 VAC 5-80-10 and 9 VAC 5-80-11).

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Effective Date: September 1, 2002.

Summary:

The regulation applies to the construction or reconstruction of new stationary sources or expansions (modifications) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a sourcewide perspective to determine applicability based

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solely upon the emissions changes directly resulting from the physical or operational change. Procedures for making changes to permits are included. The regulation also allows consideration of additional factors for making Best Available Control Technology determinations for sources subject to minor new source review.

The changes made to the repropoed regulation follow:

1. Provisions have been added to clarify the counting of fugitive emissions to determine applicability of minor new source review. Fugitive emissions are counted if quantifiable; however, if fugitive emissions are the only emissions that cause the new or modified source to be subject to minor new source review, they are not counted. [see 9 VAC 5-80-1100 D]
2. Provisions have been added to state that (i) exemption from minor new source review does not exempt a project from major new source review, and (ii) exemption from major new source review does not exempt a project from minor new source review. [see 9 VAC 5-80-1100 G]
3. Provisions have been added to allow permit terms and conditions that are state-only enforceable to be designated as such in the permit. [see 9 VAC 5-80-1100 H 4 and 9 VAC 5-80-1120 F]
4. The provisions to allow concurrent construction have been deleted. [see 9 VAC 5-80-1130]
5. Provisions have been added to require certification from the permit applicant that the applicant understands that issuance of the minor new source review permit (i) does not shield the applicant from enforcement of the major new source review permit program and (ii) does not relieve the applicant from compliance with the major new source review program. [see 9 VAC 5-80-1140 E]
6. The provisions covering public participation for sources of hazardous air pollutants have been changed to require a public comment period only for permit applications requiring a case-by-case maximum available control technology (MACT) determination under the federal hazardous air pollutant new source review program. [see 9 VAC 5-80-1170 D 1]
7. The provisions to allow plantwide applicability limits have been deleted and replaced with provisions that allow pollution control projects under this permit program and exempt them from major new source review. Pollution control projects are physical or operational changes at a source whose primary function is the reduction of emissions of targeted regulated air pollutants but which also result in an increase in emissions of nontargeted regulated air pollutants that qualify as a major modification subject to major source new source review. [see 9 VAC 5-80-1110 C, definitions of "pollution control project" and "targeted regulated air pollutant," and 9 VAC 5-80-1310]
8. The provisions concerning exemption levels have been simplified somewhat and clarified in some cases. [see 9 VAC 5-80-1320]

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's

response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Alma Jenkins, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070, FAX (804) 698-4510, toll free 1-800-592-5482 or (804) 698-4021/TTY.

CHAPTER 50. NEW AND MODIFIED STATIONARY SOURCES.

PART II. EMISSION STANDARDS.

Article 4. Standards of Performance for Stationary Sources (Rule 5-4).



9 VAC 5-50-390. Permits.

A permit may be required prior to beginning any of the activities specified below ~~and if the provisions of this chapter and 9 VAC 5 Chapter 80 (9 VAC 5-80 [-10 et seq.]) may apply.~~ Owners contemplating such action should *review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.*

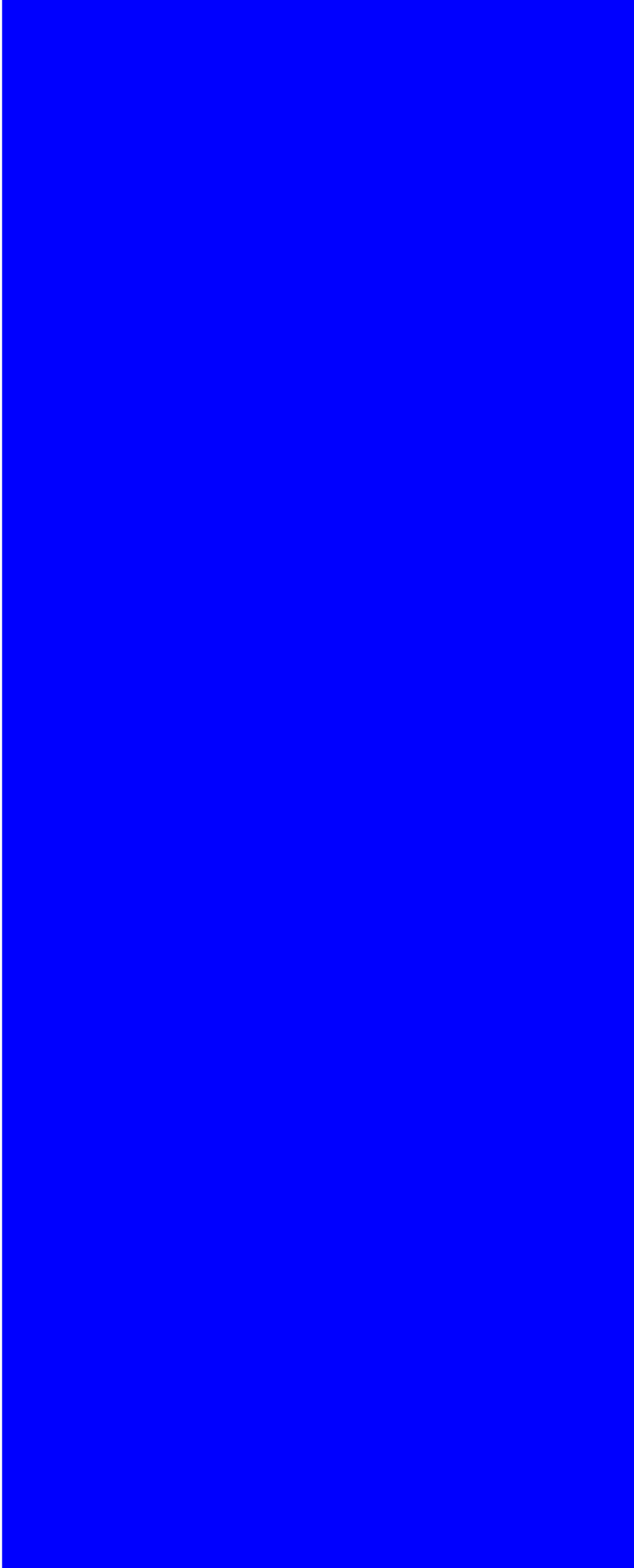
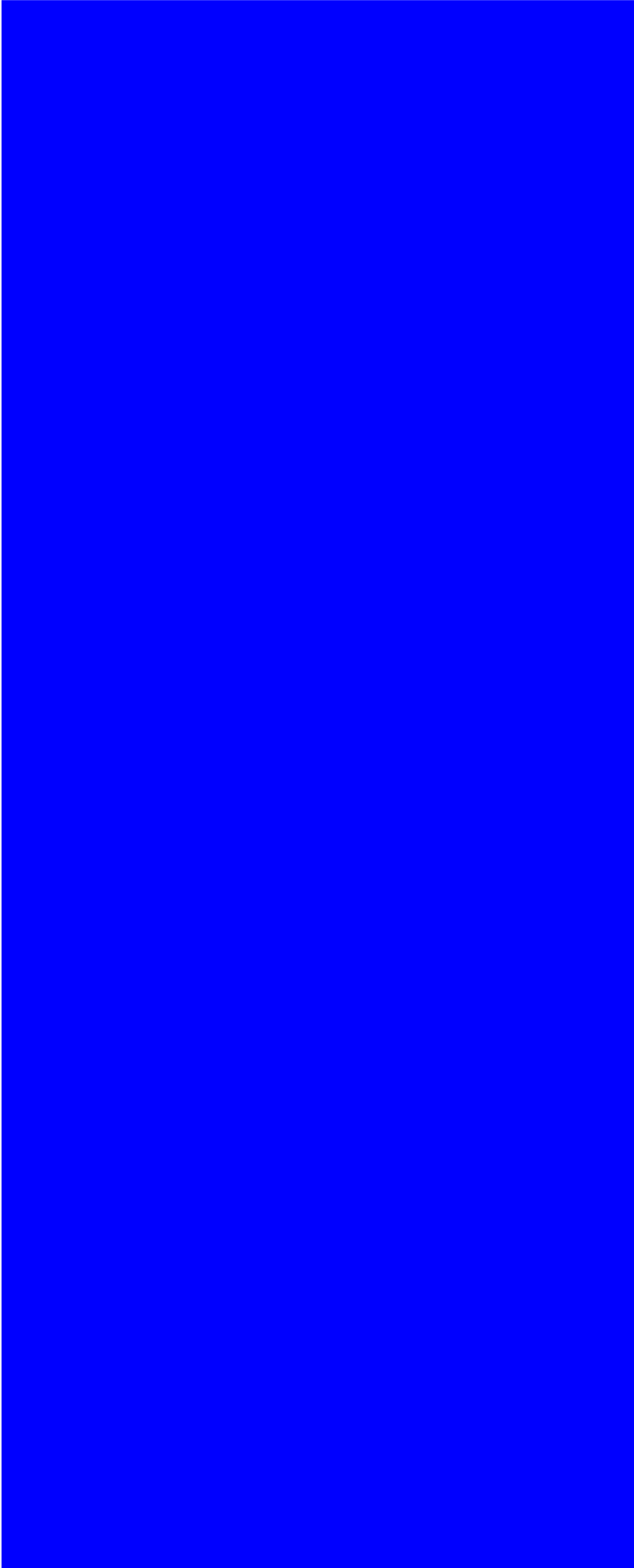
1. Construction of a facility.
2. Reconstruction (replacement of more than half) of a facility.
3. Modification (any physical change to equipment) of a facility.
4. Relocation of a facility.
5. Reactivation (restart-up) of a facility.
6. *Operation of a facility.*

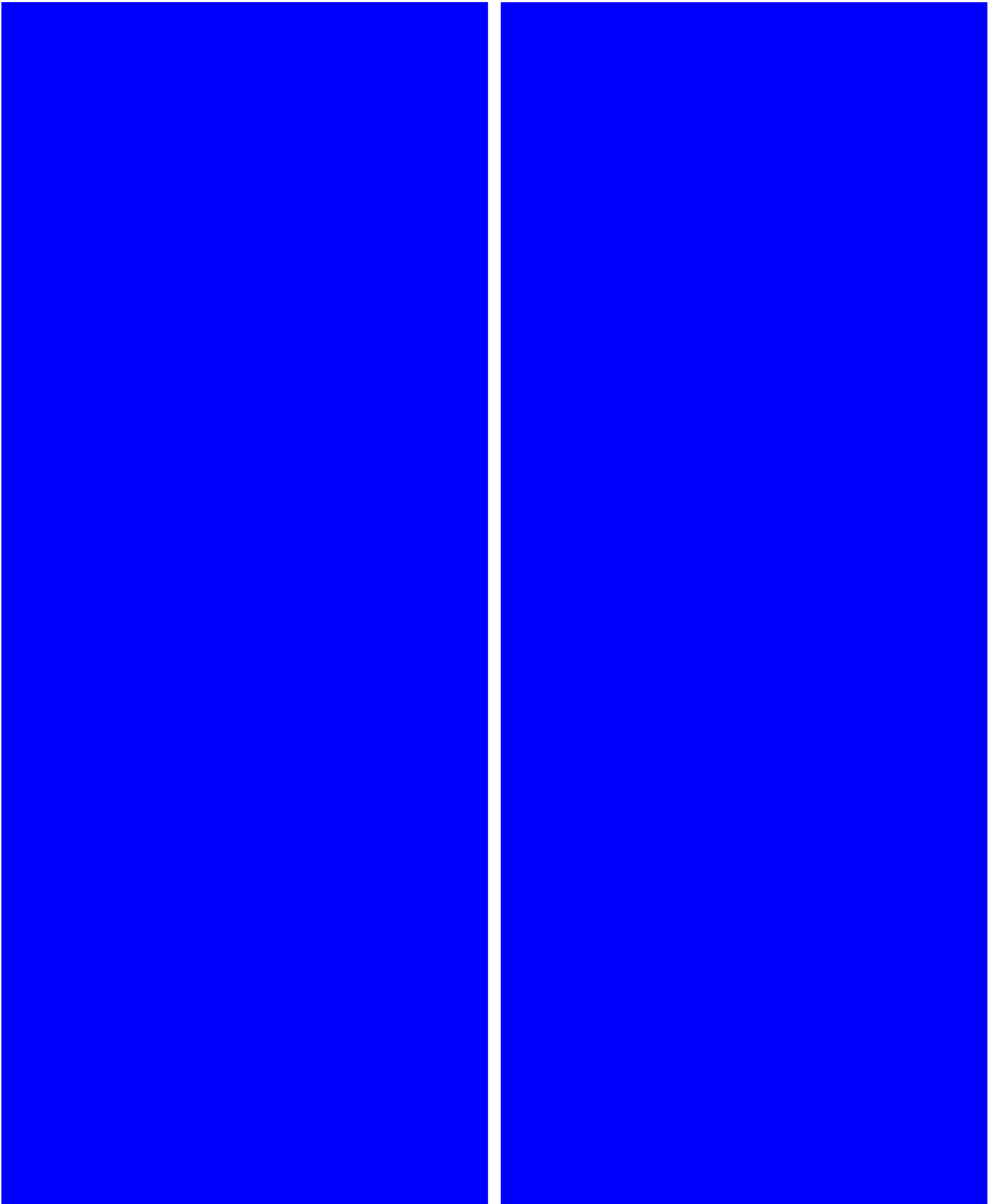
CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

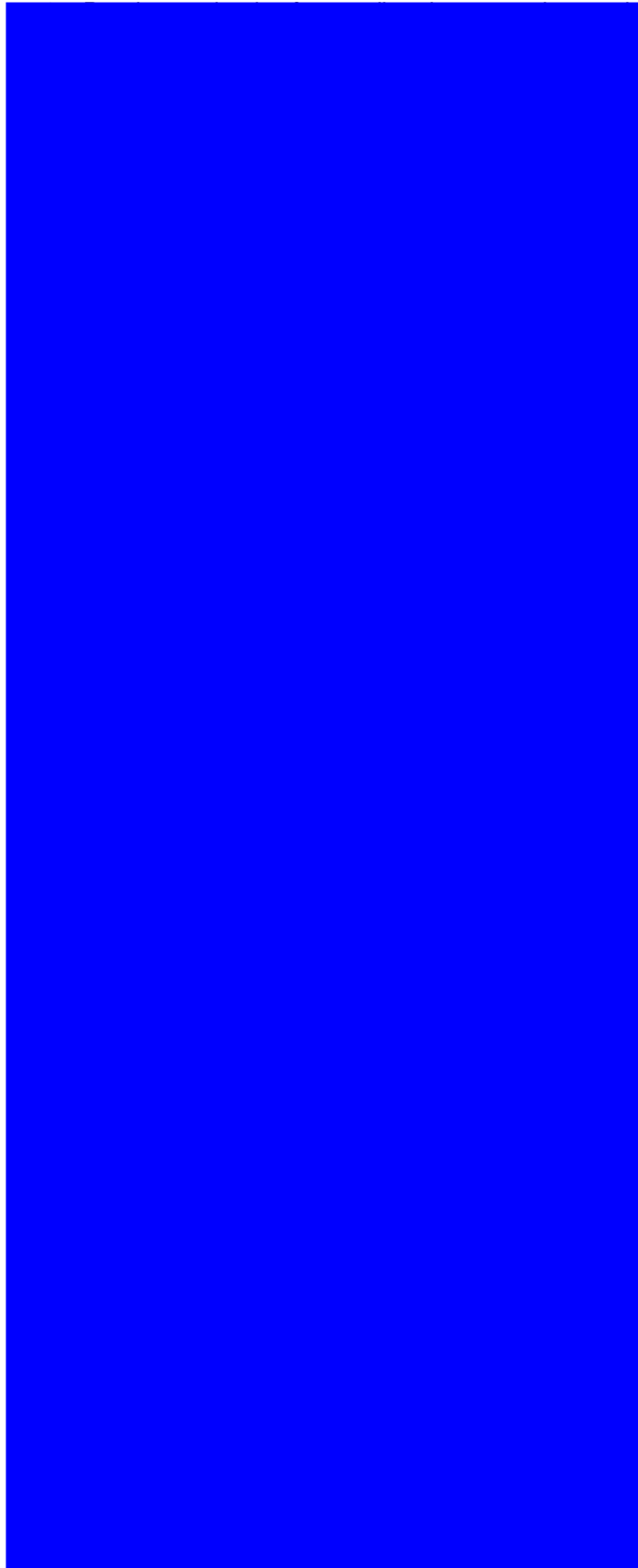
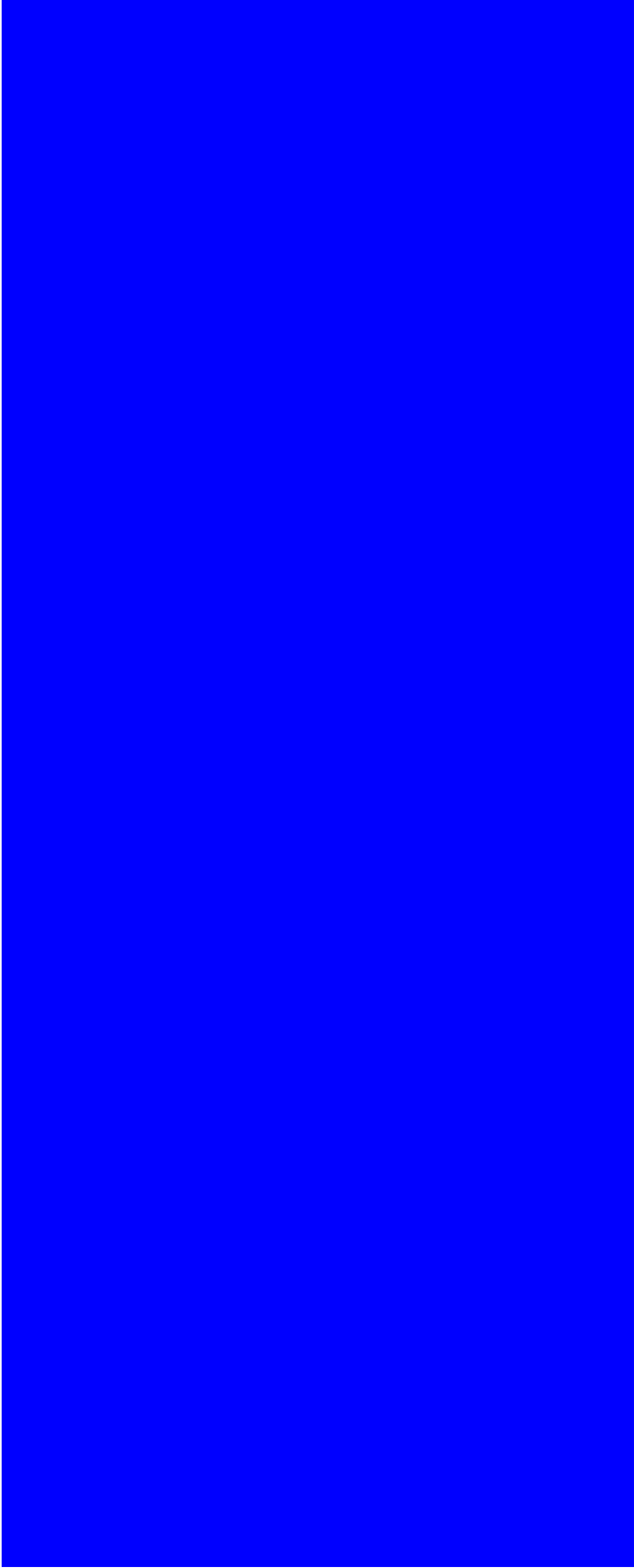
PART II.
~~OPERATING PERMITS~~ PERMIT PROCEDURES.

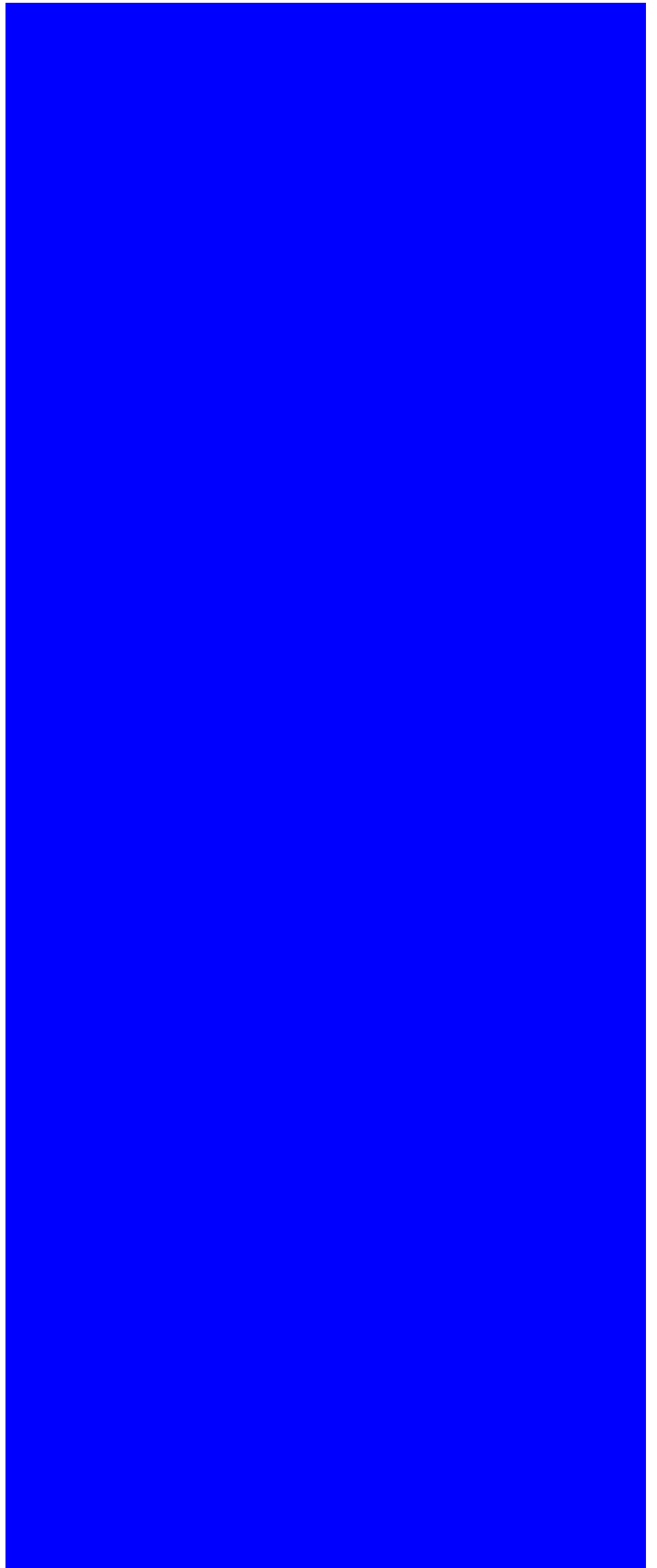
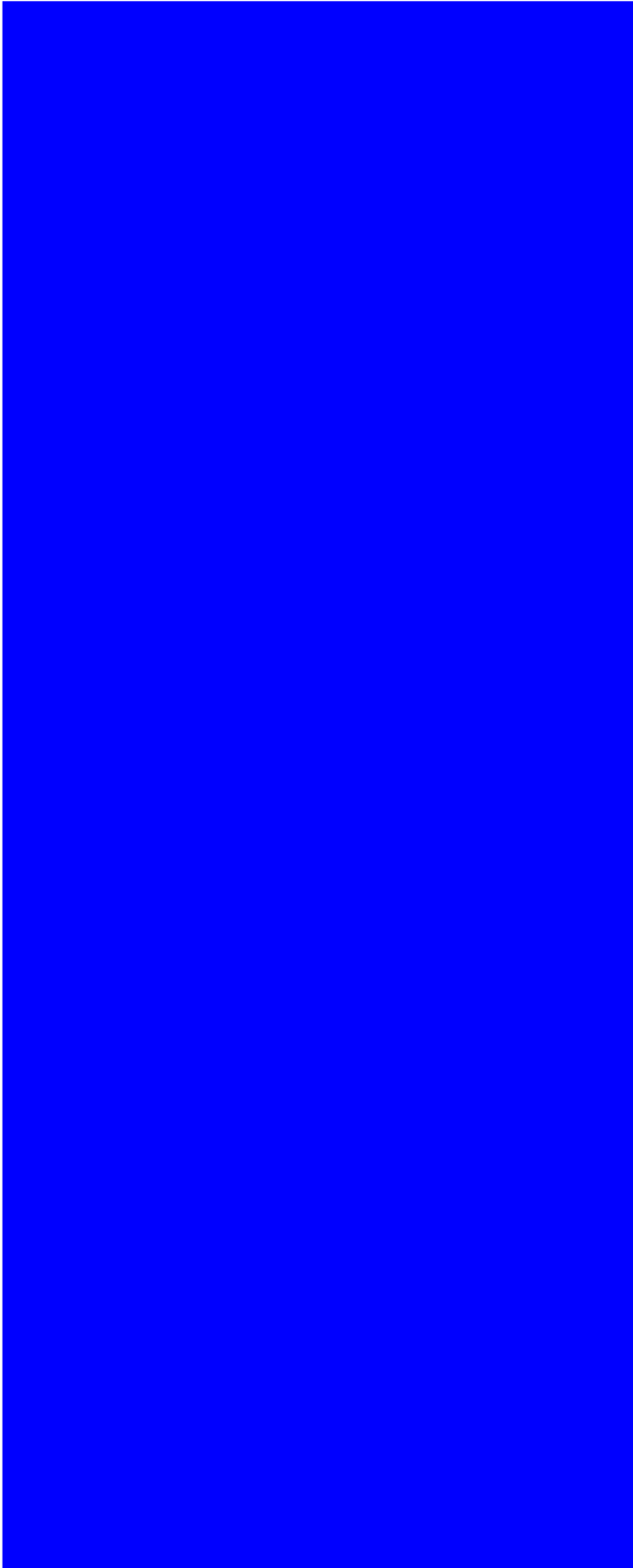
Article 6.
Permits for New and Modified Stationary Sources.

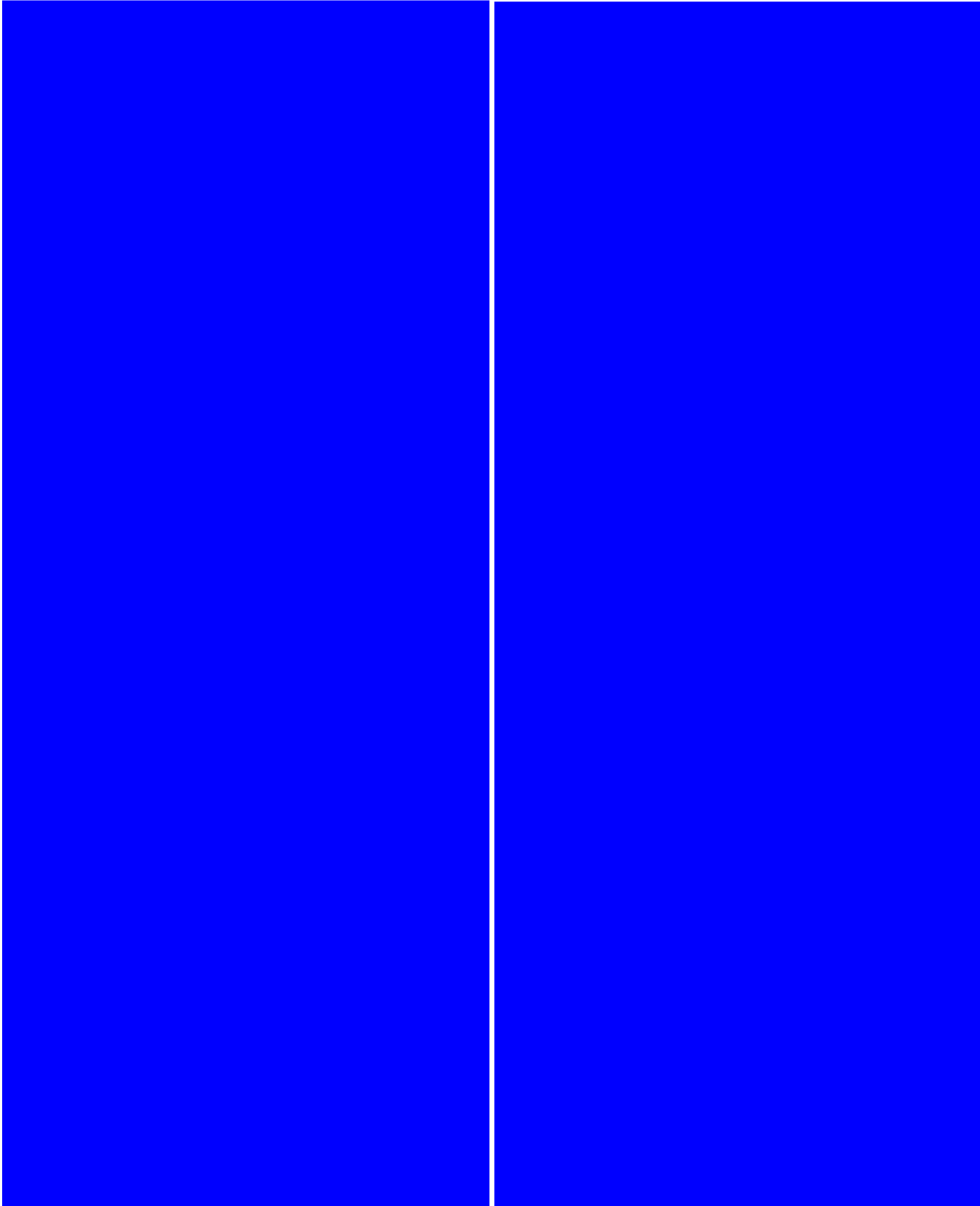
9 VAC 5-80-10. ~~Permits new and modified stationary sources. (Repealed.)~~

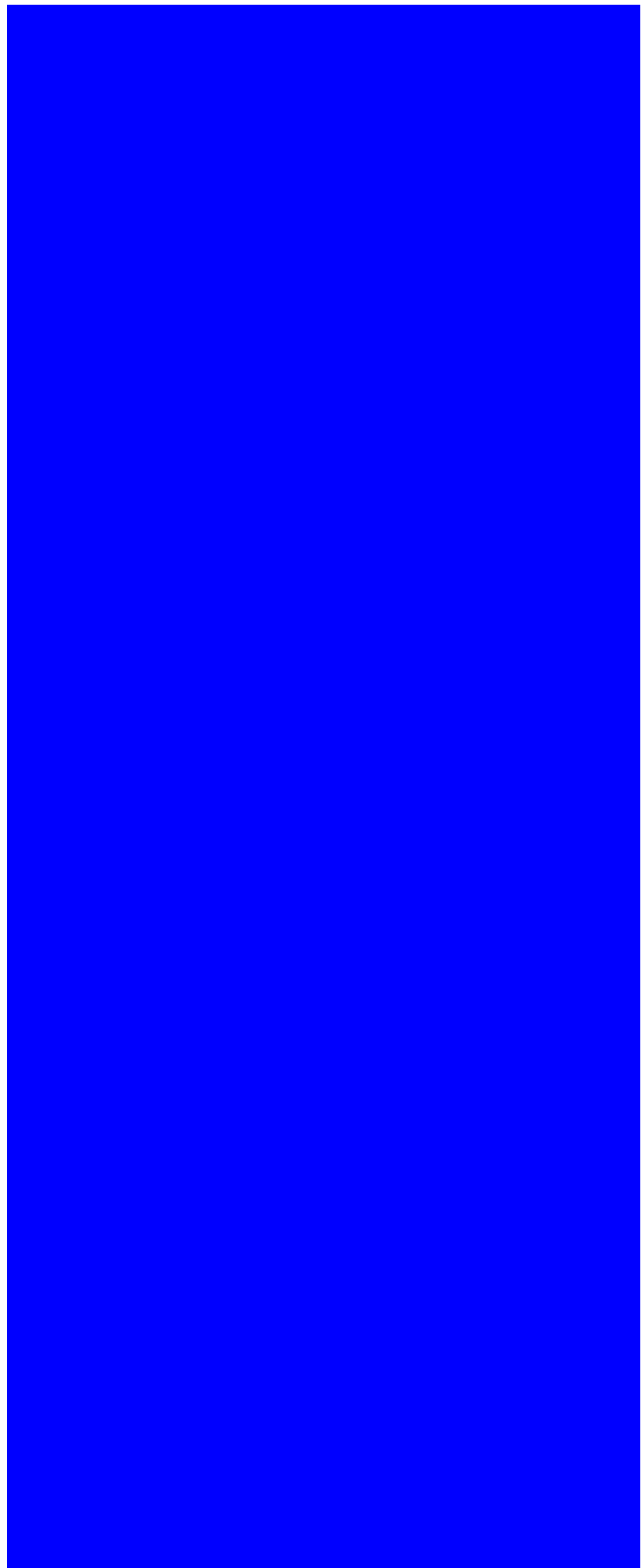


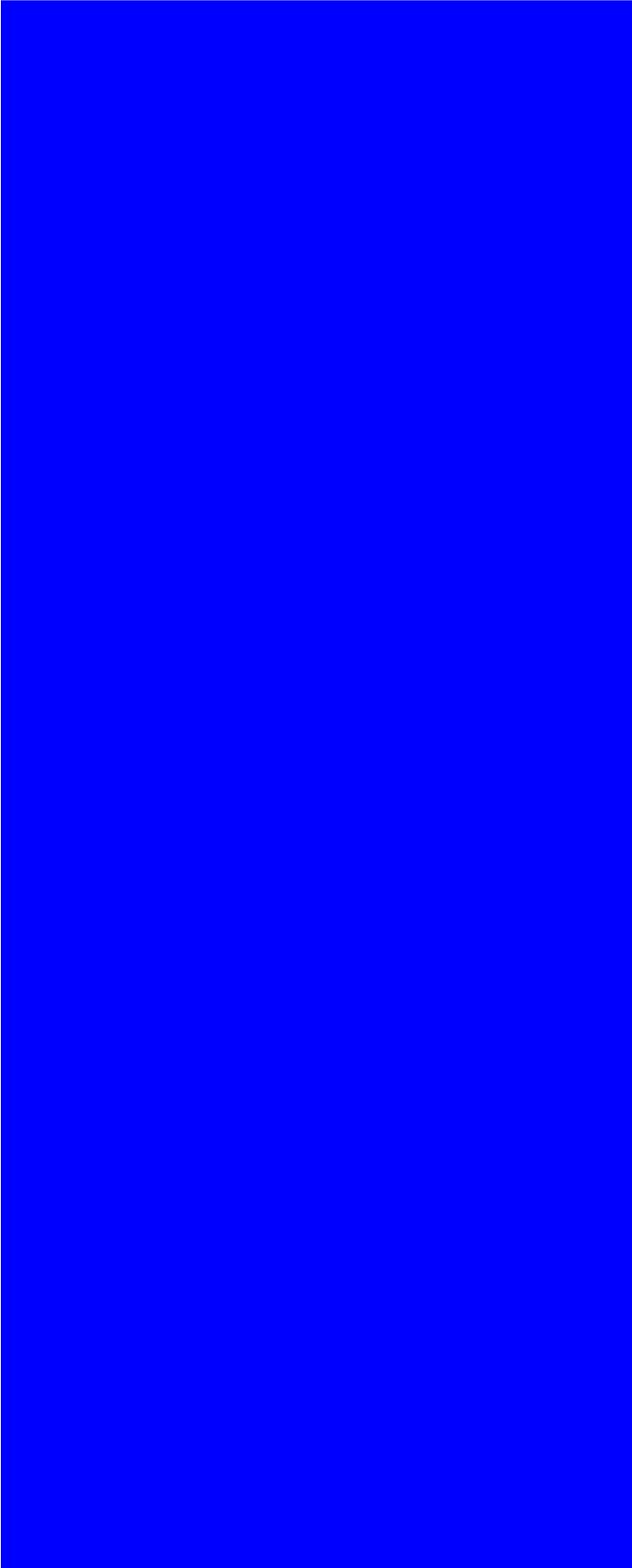


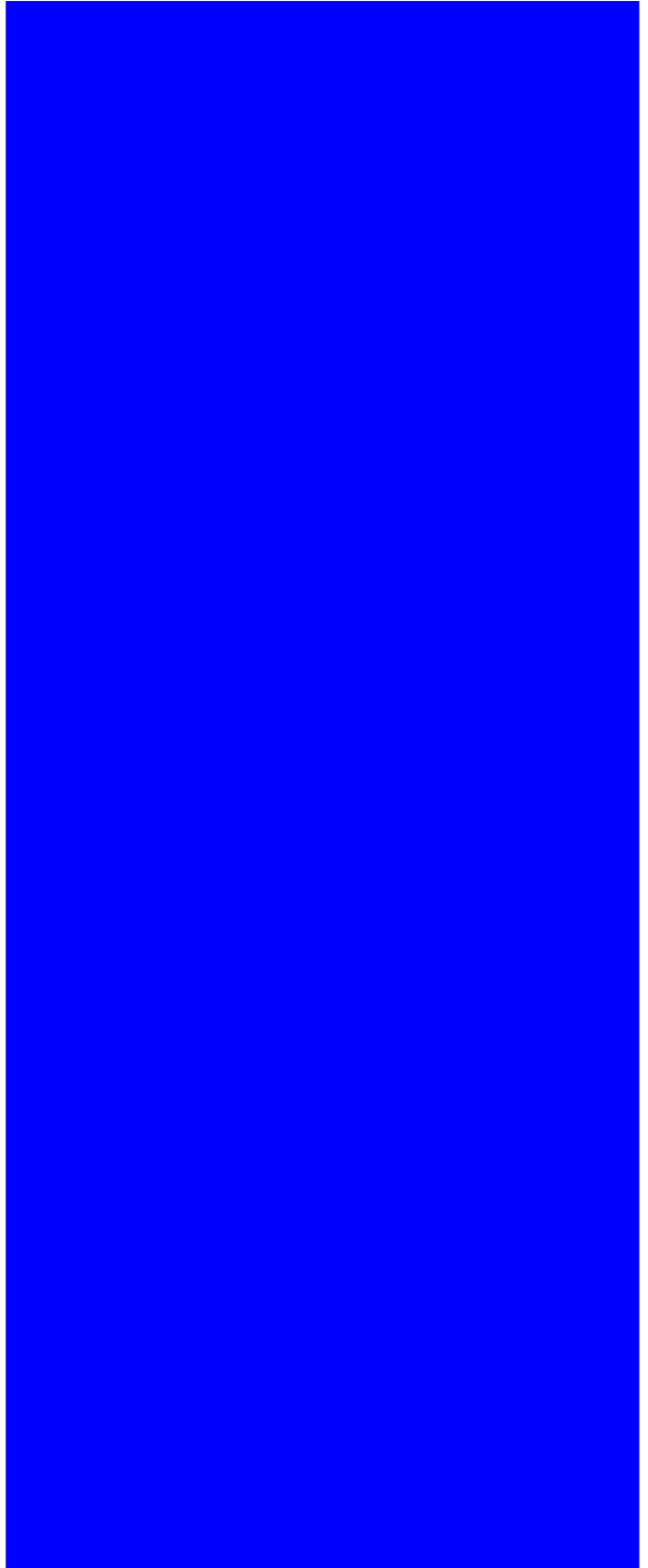
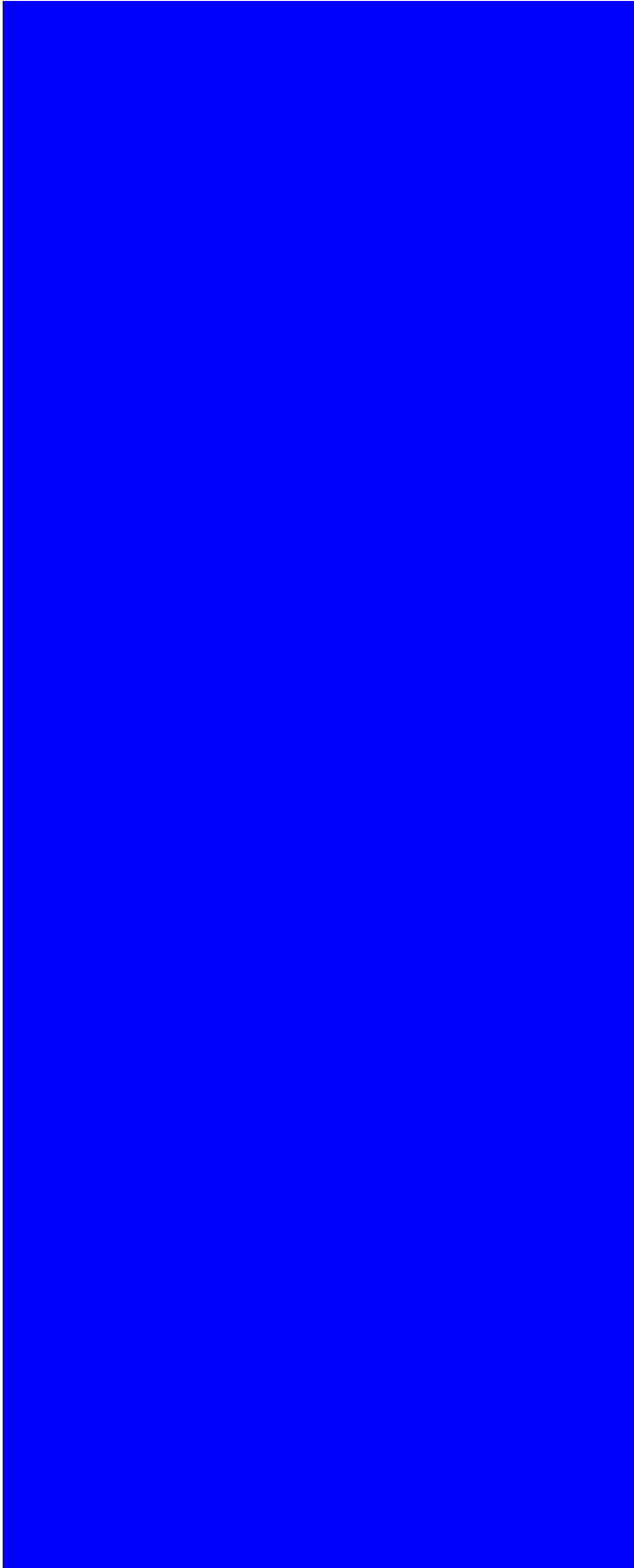


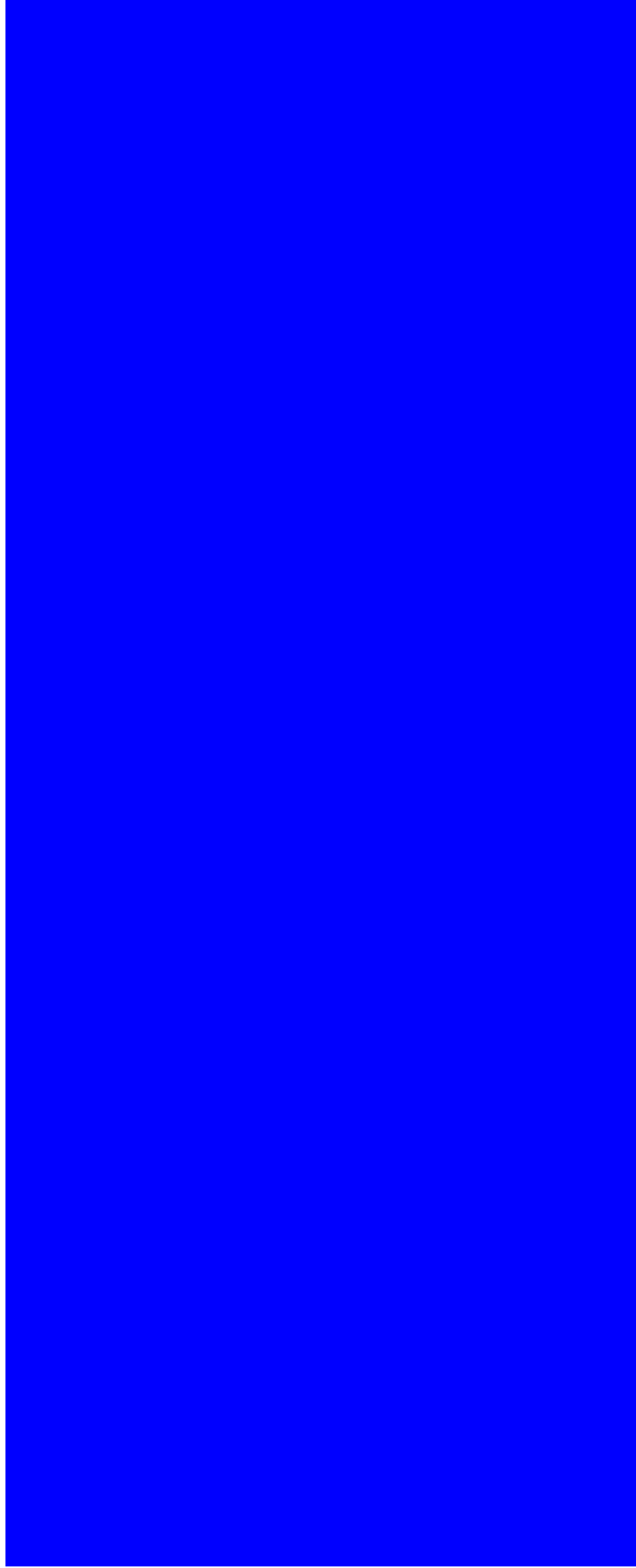


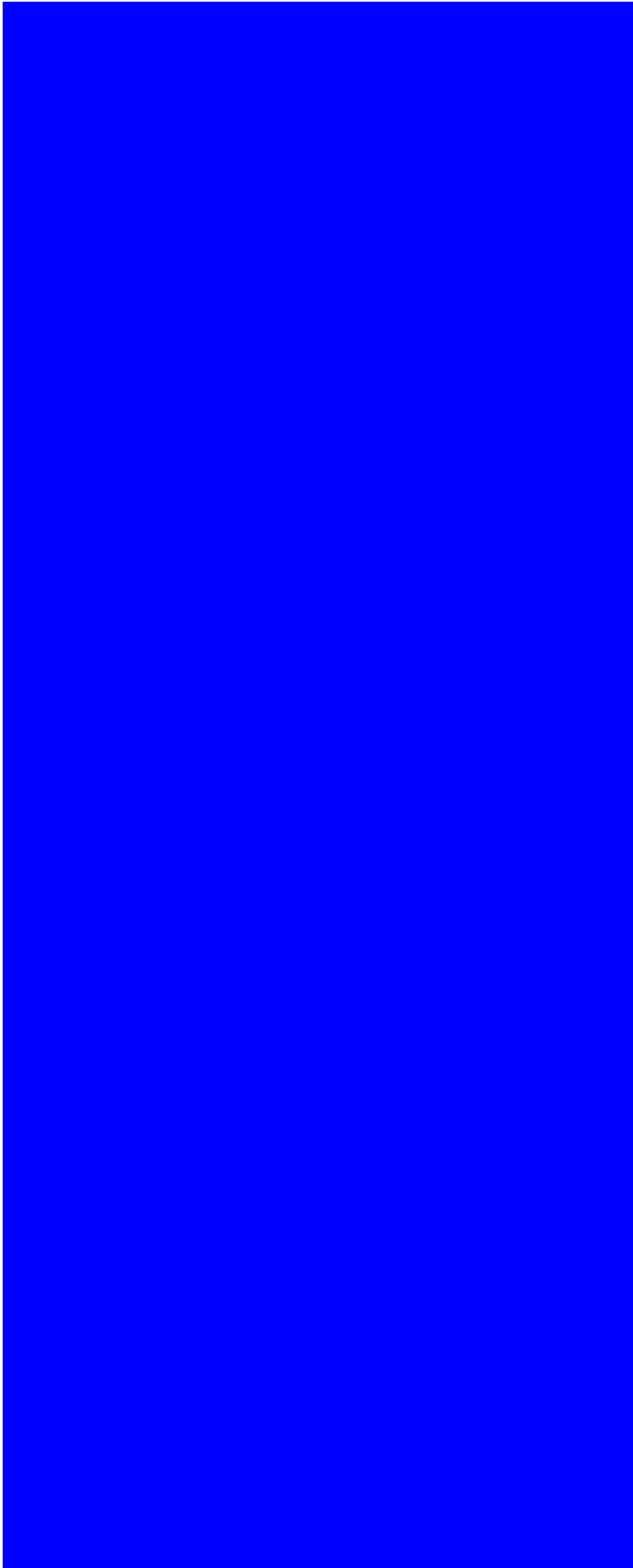


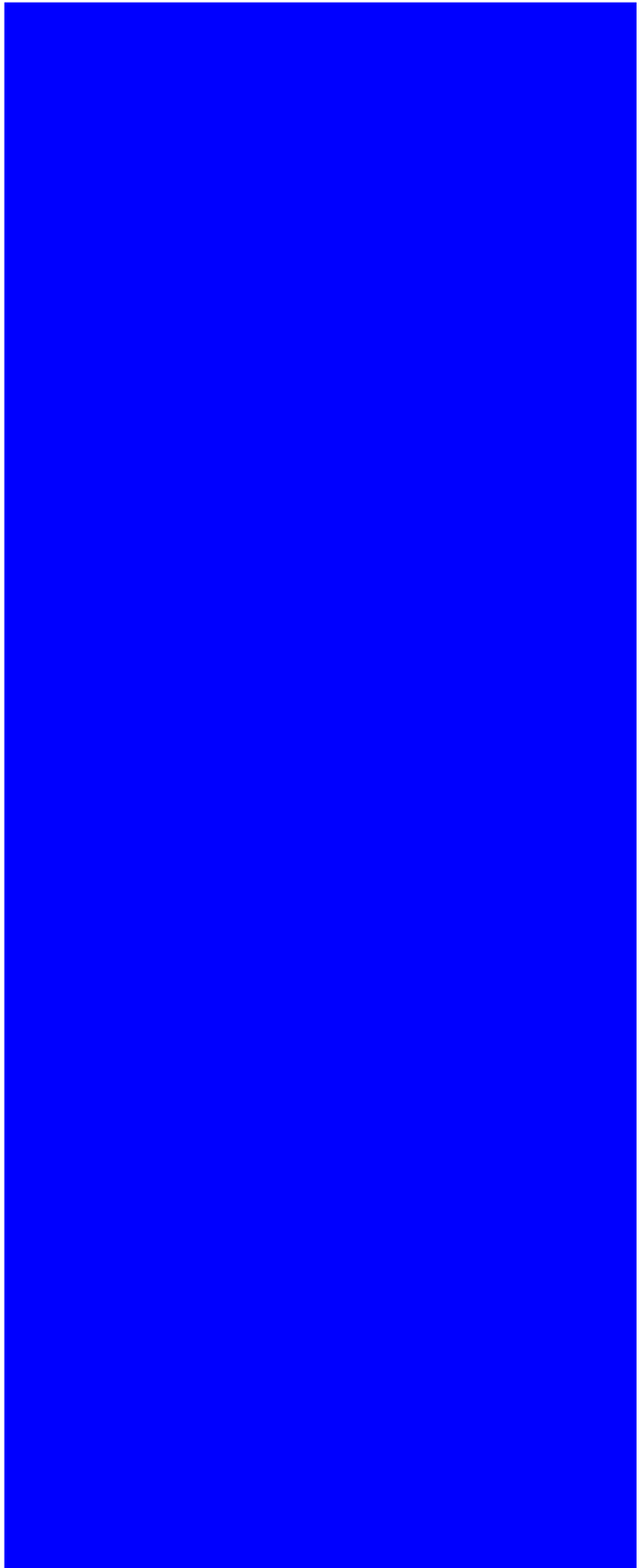


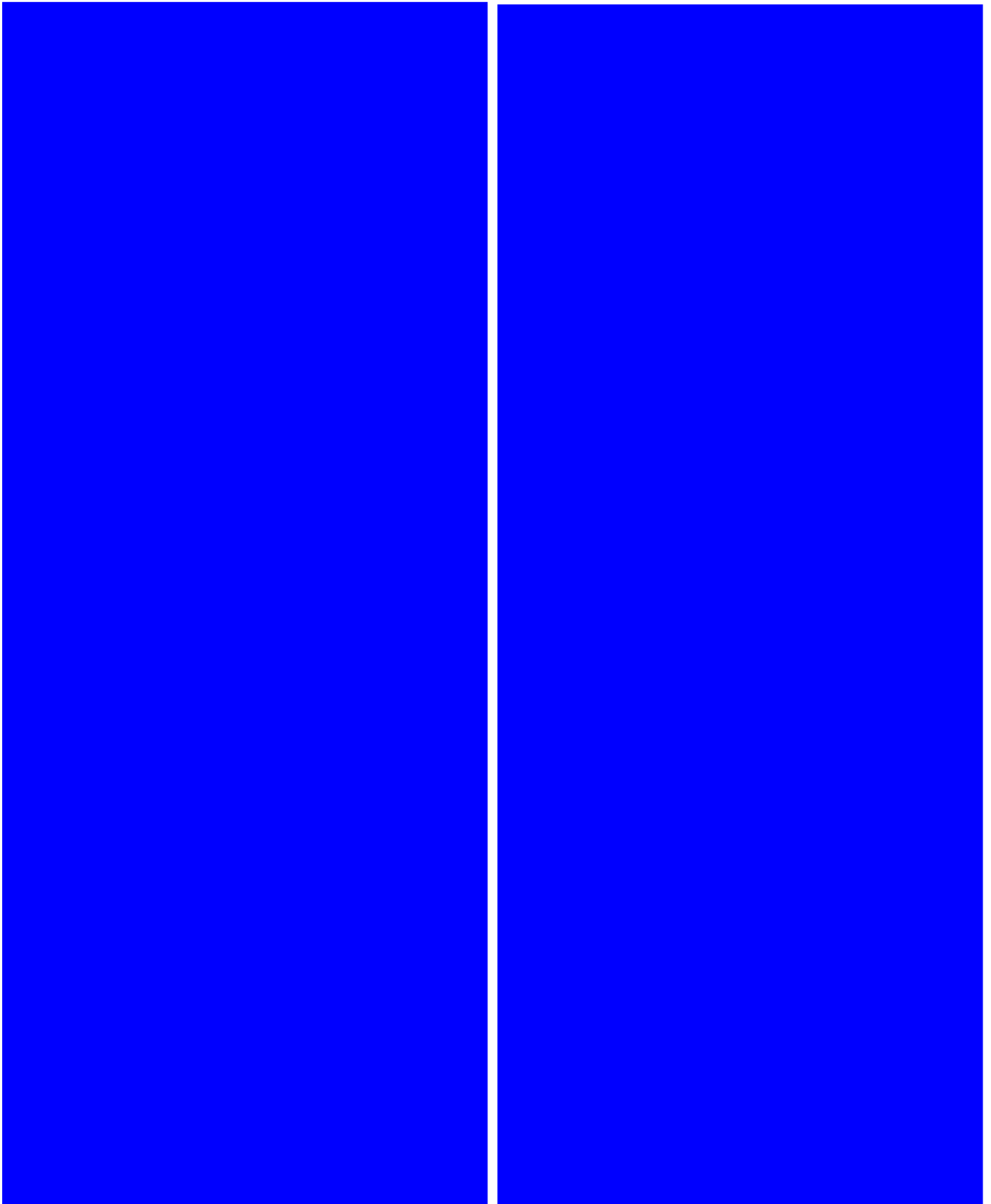


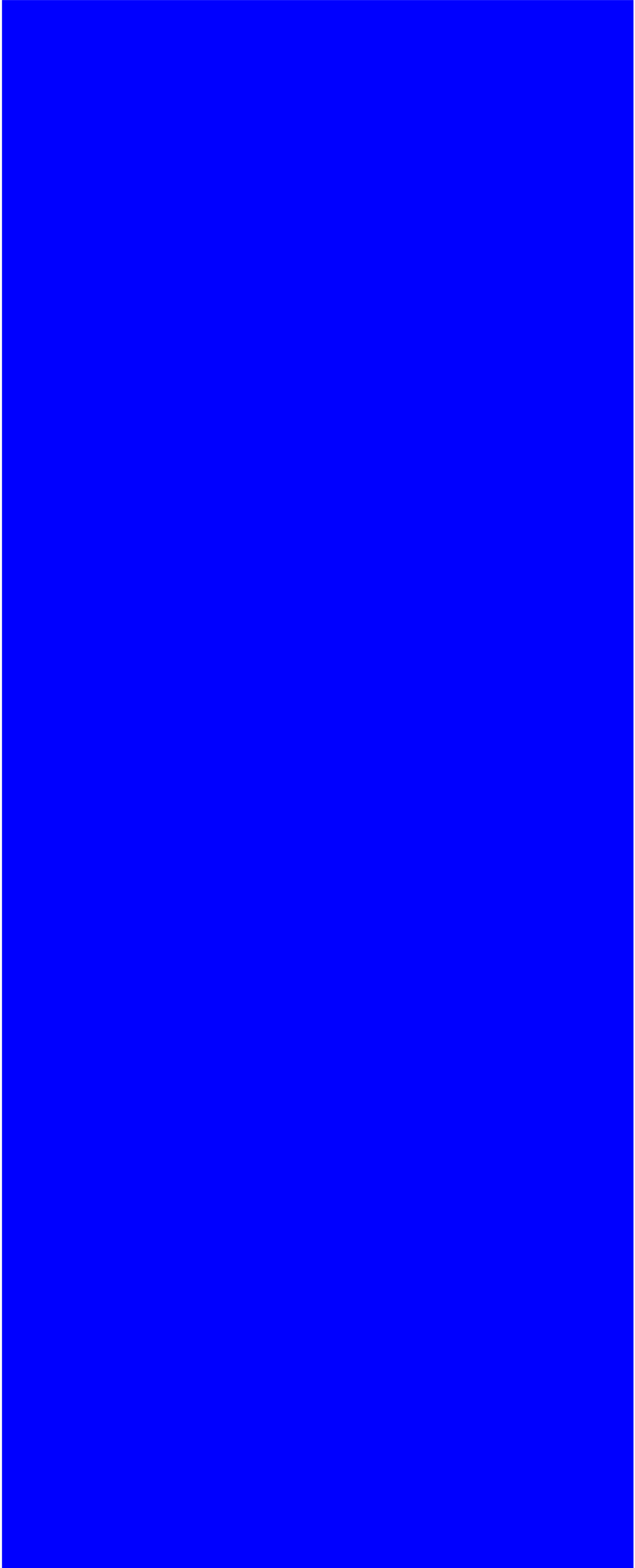
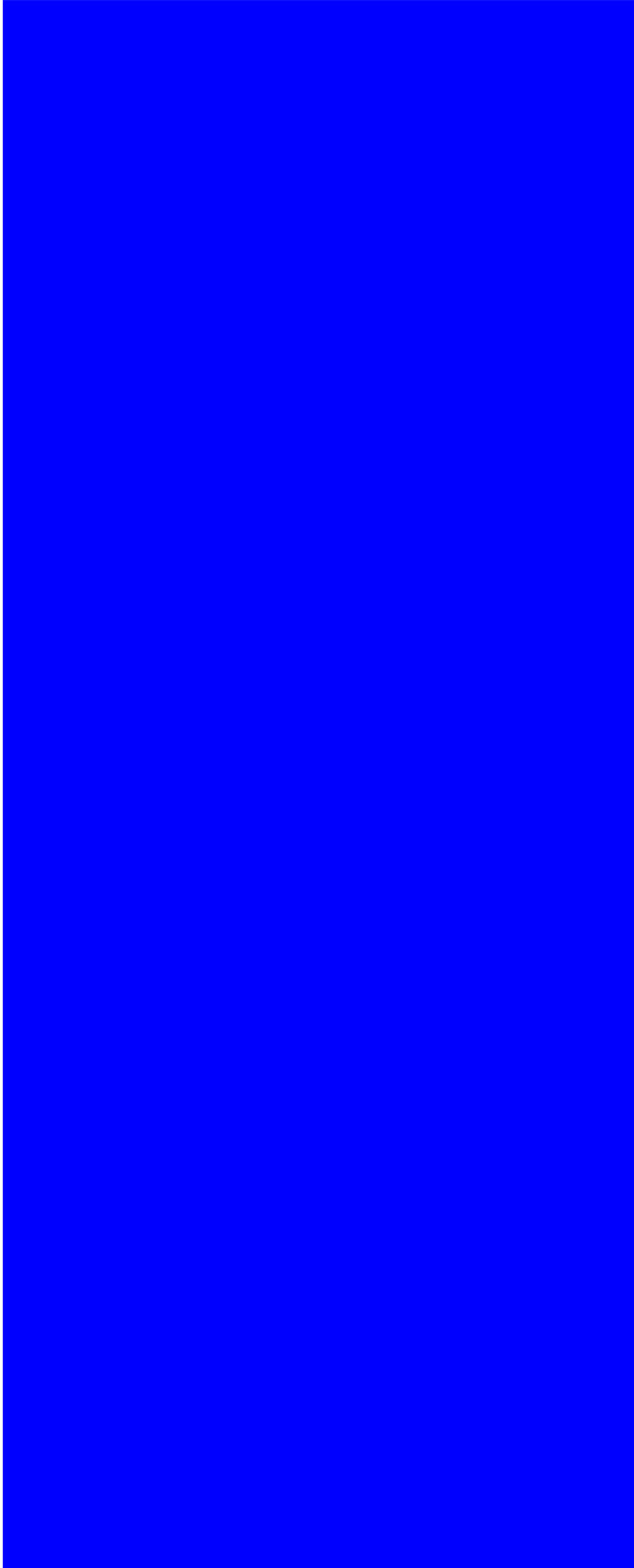












M. 9 VAC 5-80-1230. Compliance with local zoning requirements.

~~The owner shall~~ *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; provided, however, that such compliance does not relieve the board of its duty under ~~9 VAC 5-20-140 of these Regulations~~ 9 VAC 5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.*

N. Reactivation and permanent shutdown.

~~1. The reactivation of a stationary source is not subject to provisions of this section unless a decision concerning shutdown has been made pursuant to the provisions of subdivisions N2 through N4 of this section or 9 VAC 5-80-40 P 5.~~

~~2. Upon a final decision by the board that a stationary source is shut down permanently, the board shall revoke the permit by written notification to the owner and remove the source from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the source shall not commence operation without a permit being issued under the applicable provisions of this chapter.~~

~~3. The final decision shall be rendered as follows:~~

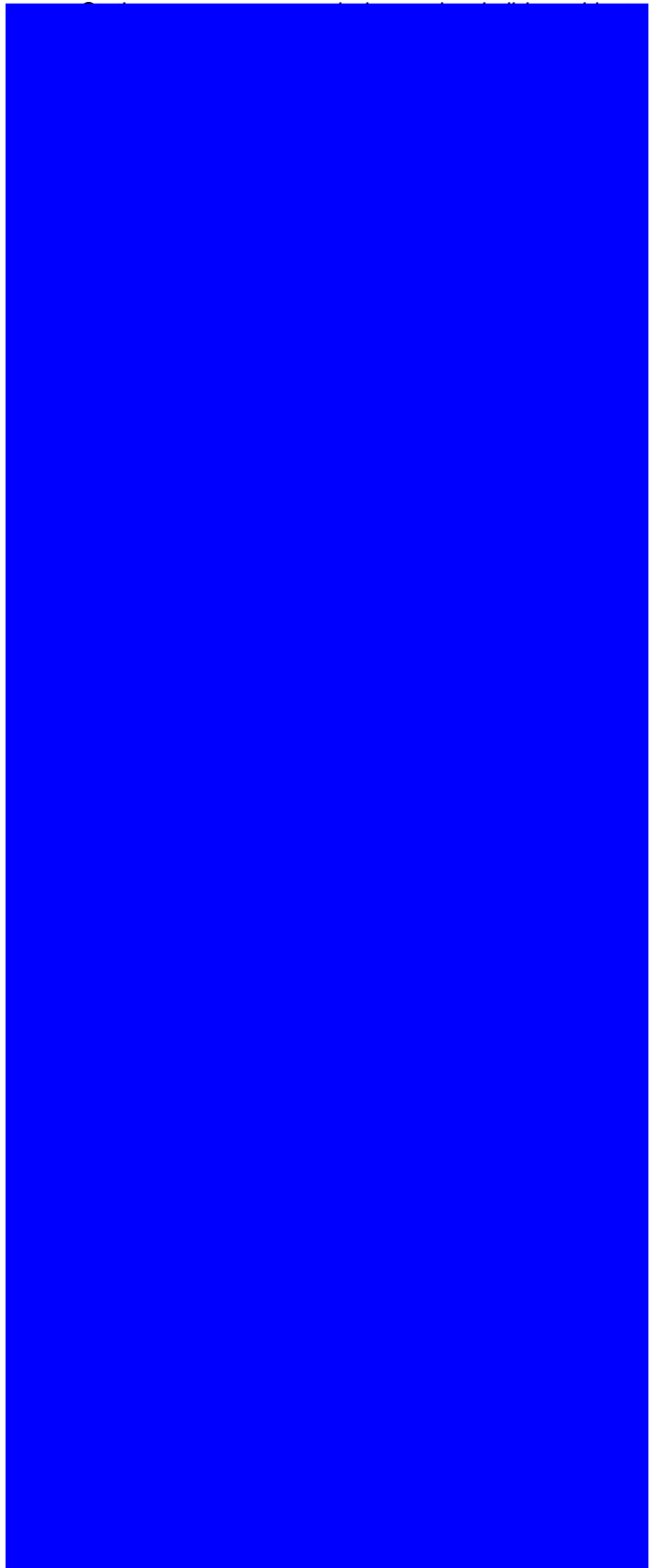
~~a. Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes~~

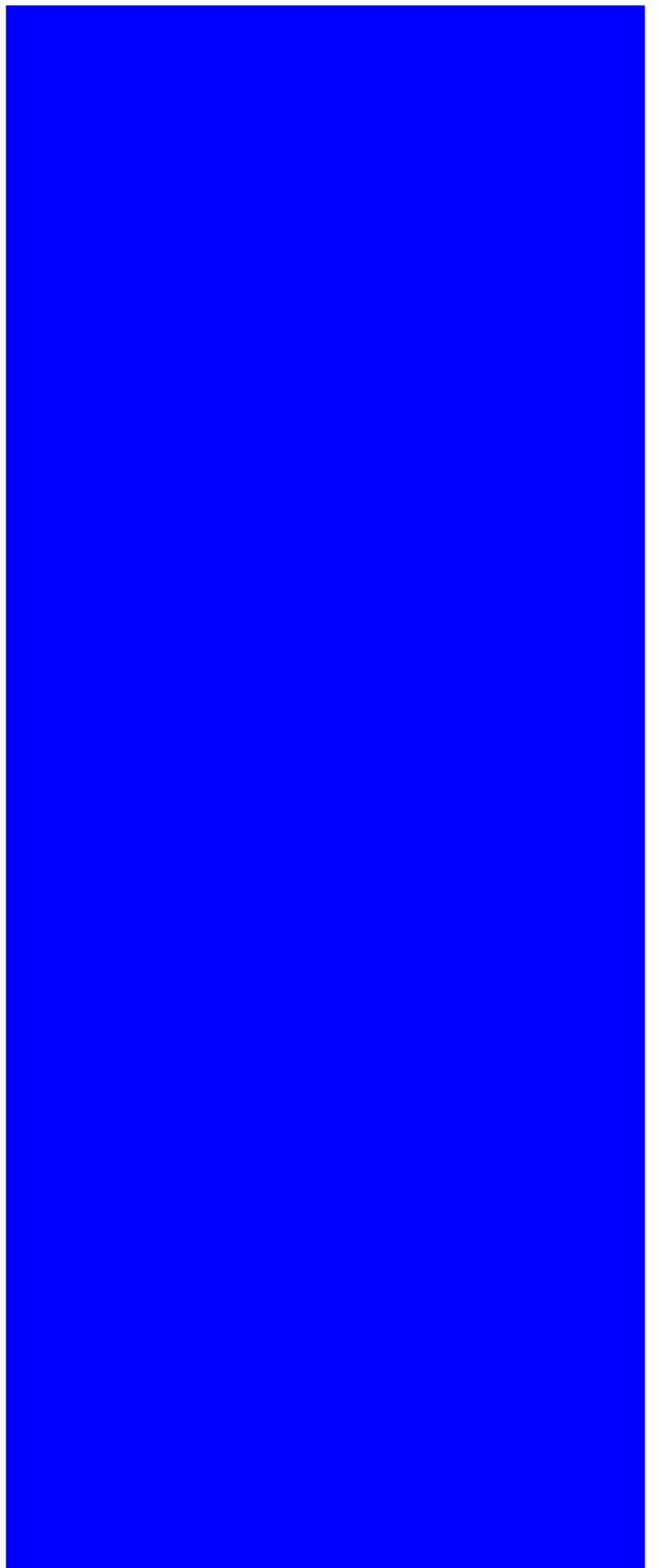
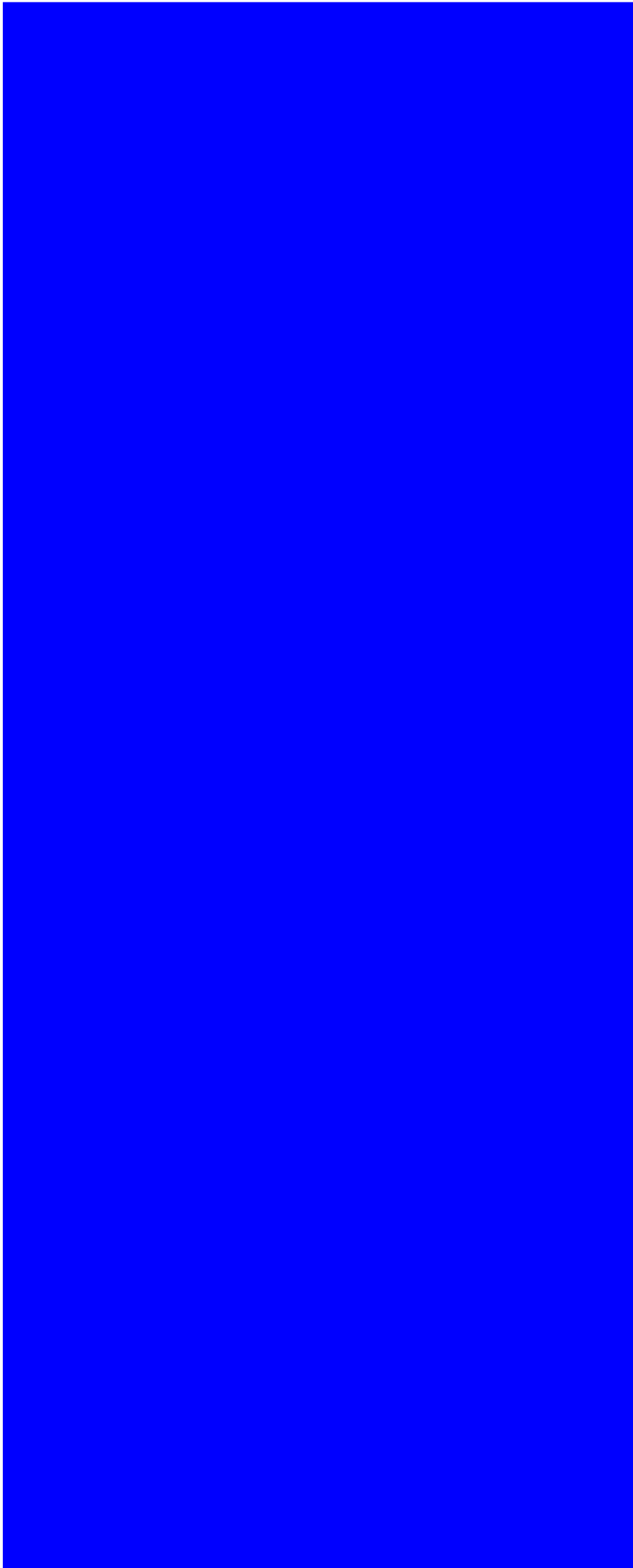
Final Regulations

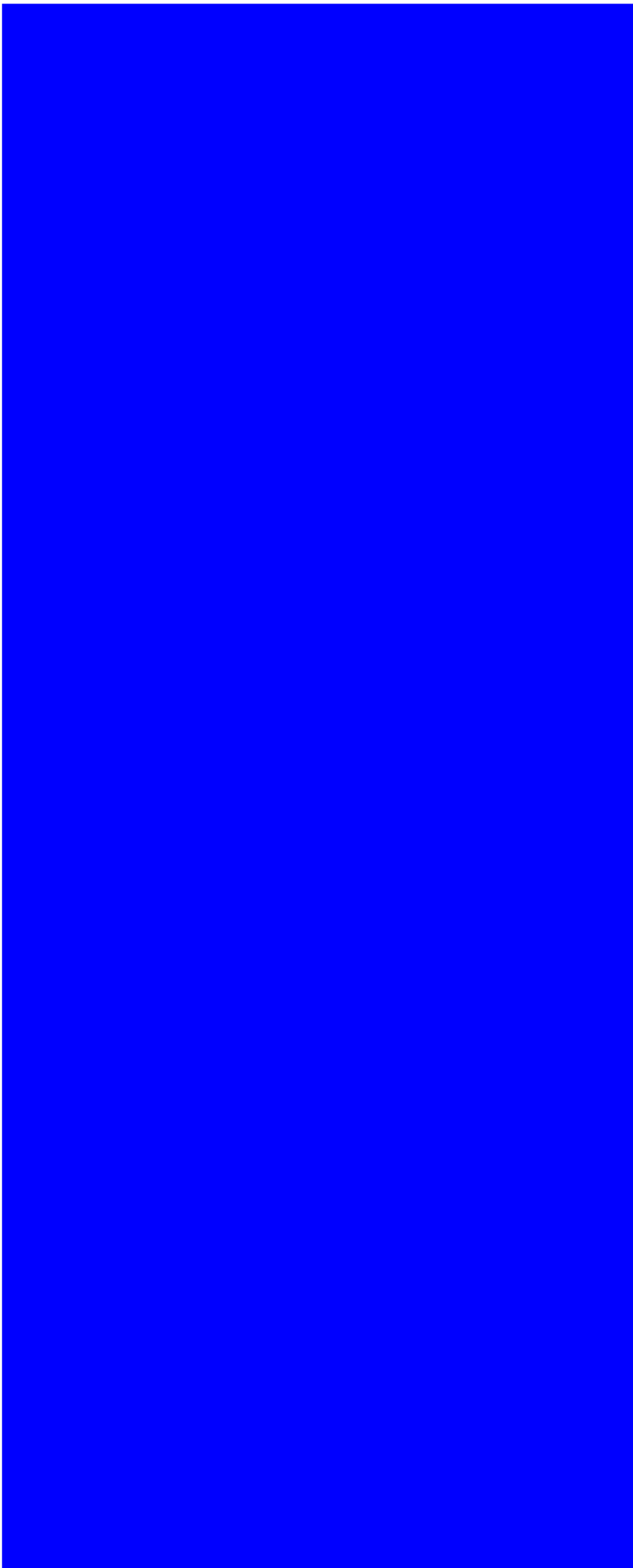
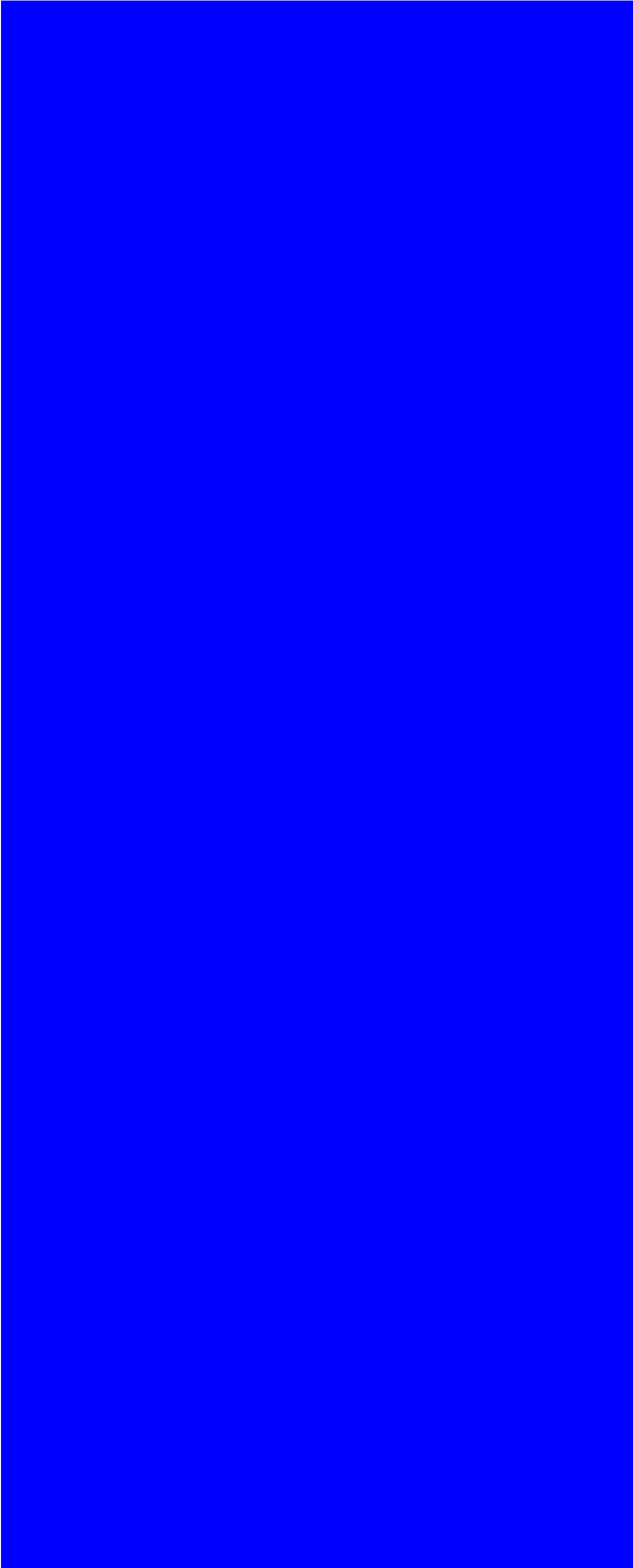
~~a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart up of the source and shall include a request for a formal hearing if the owner wishes to exercise that right.~~

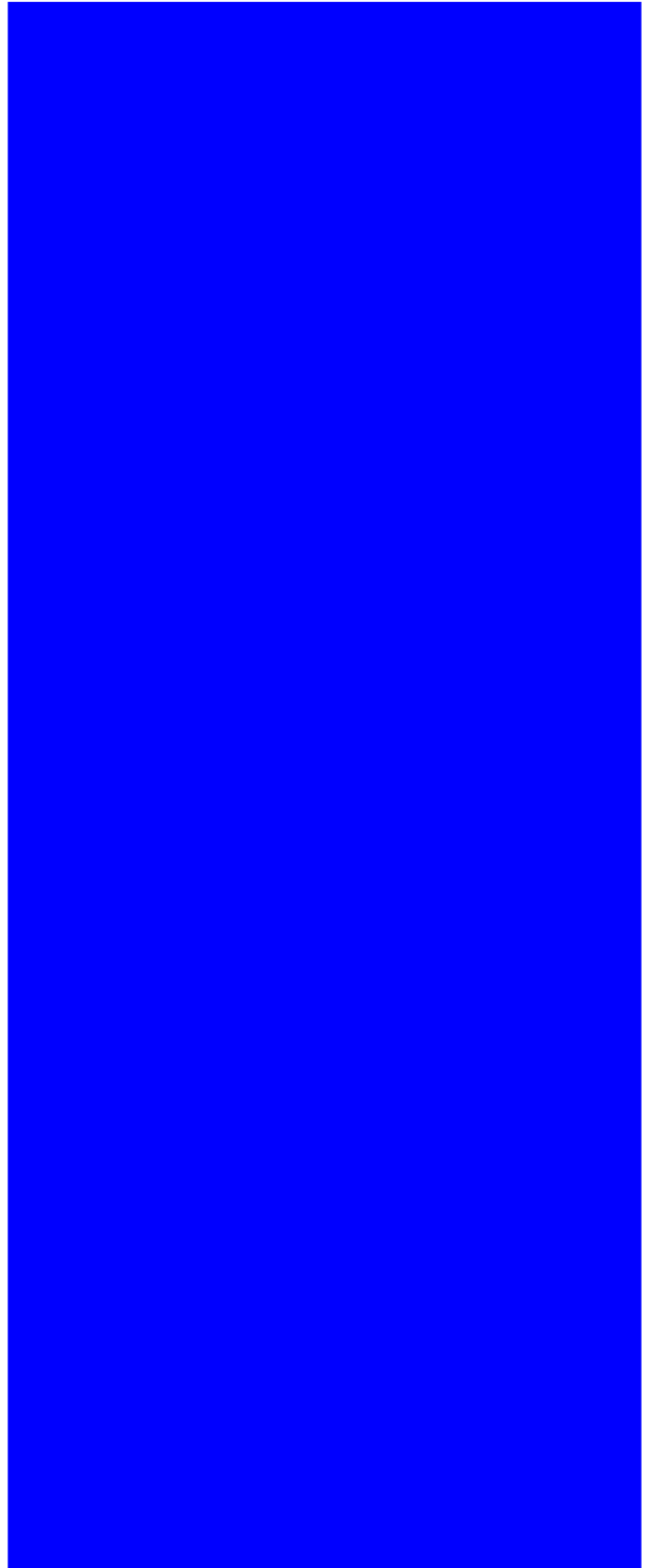
~~b. If the board should find that the basis for the assertion is not sound or the projected restart up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested or, if no hearing is requested, the decision to consider the shutdown permanent shall become final.~~

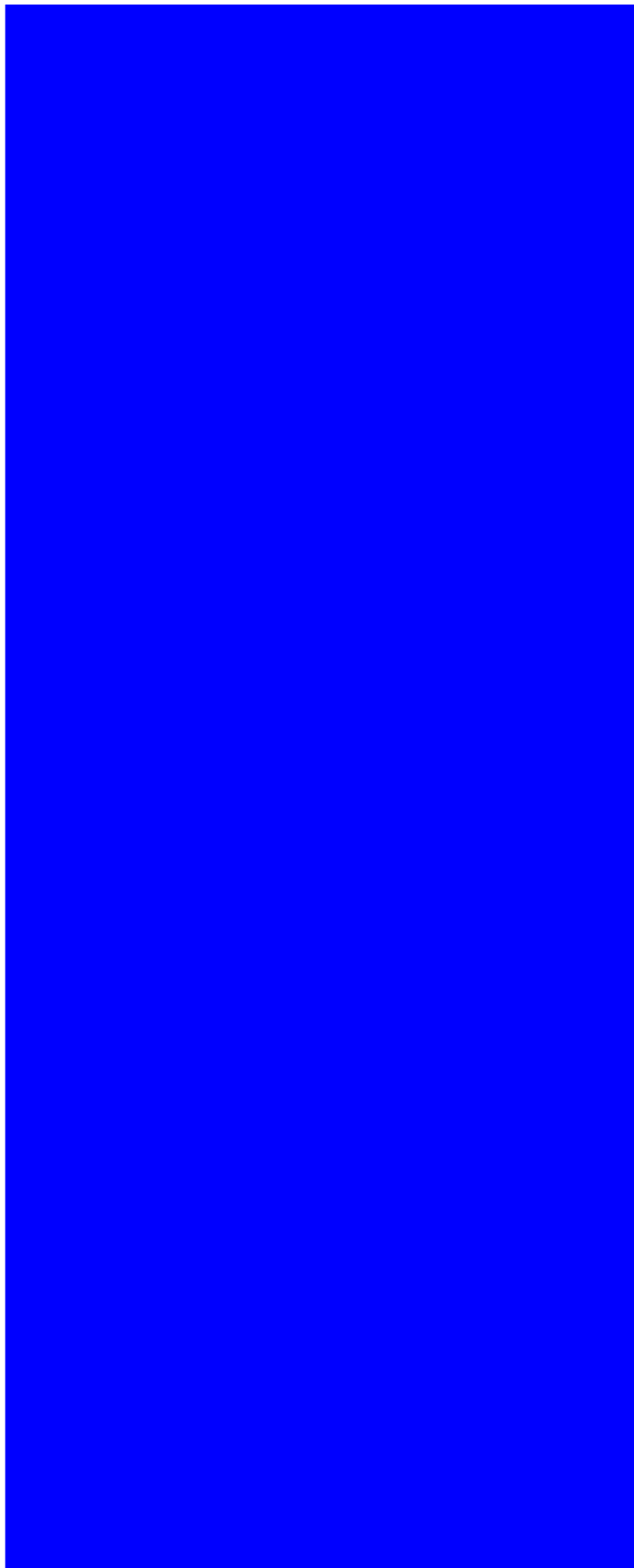
~~4. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under subdivision N 3 of this section.~~

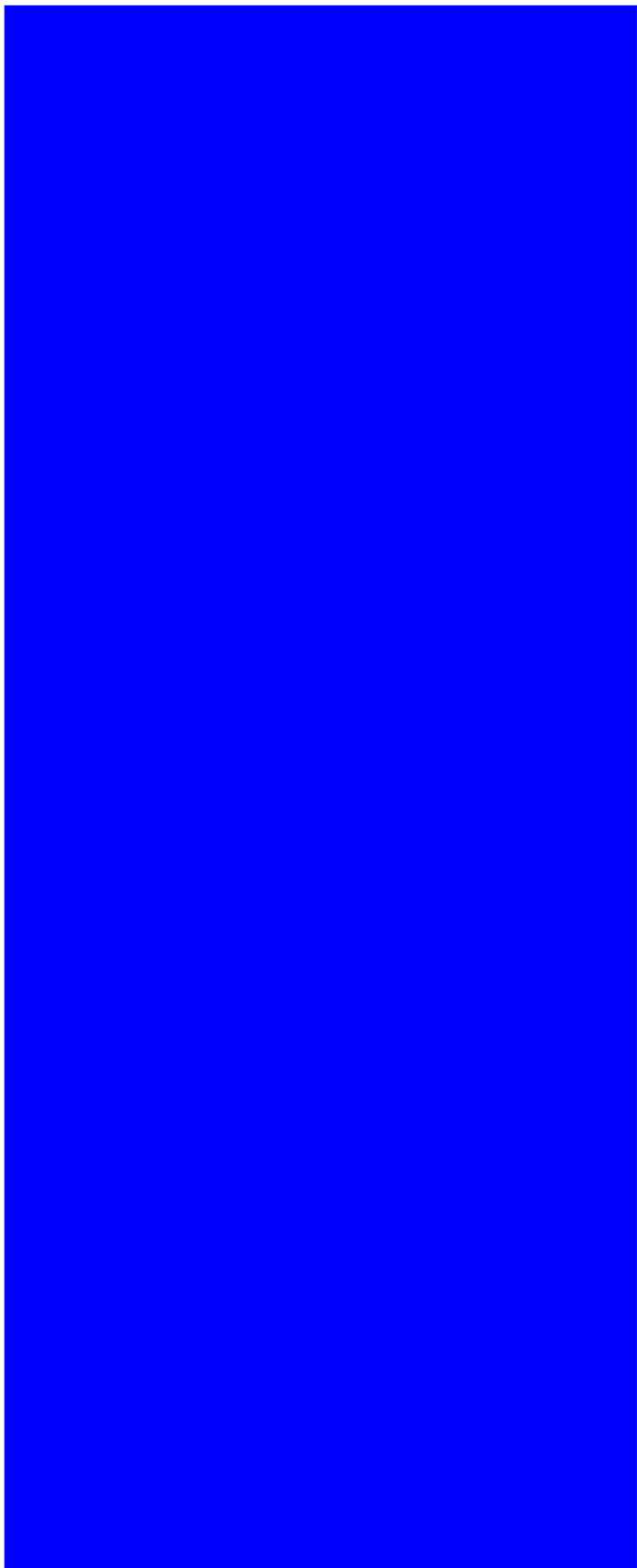
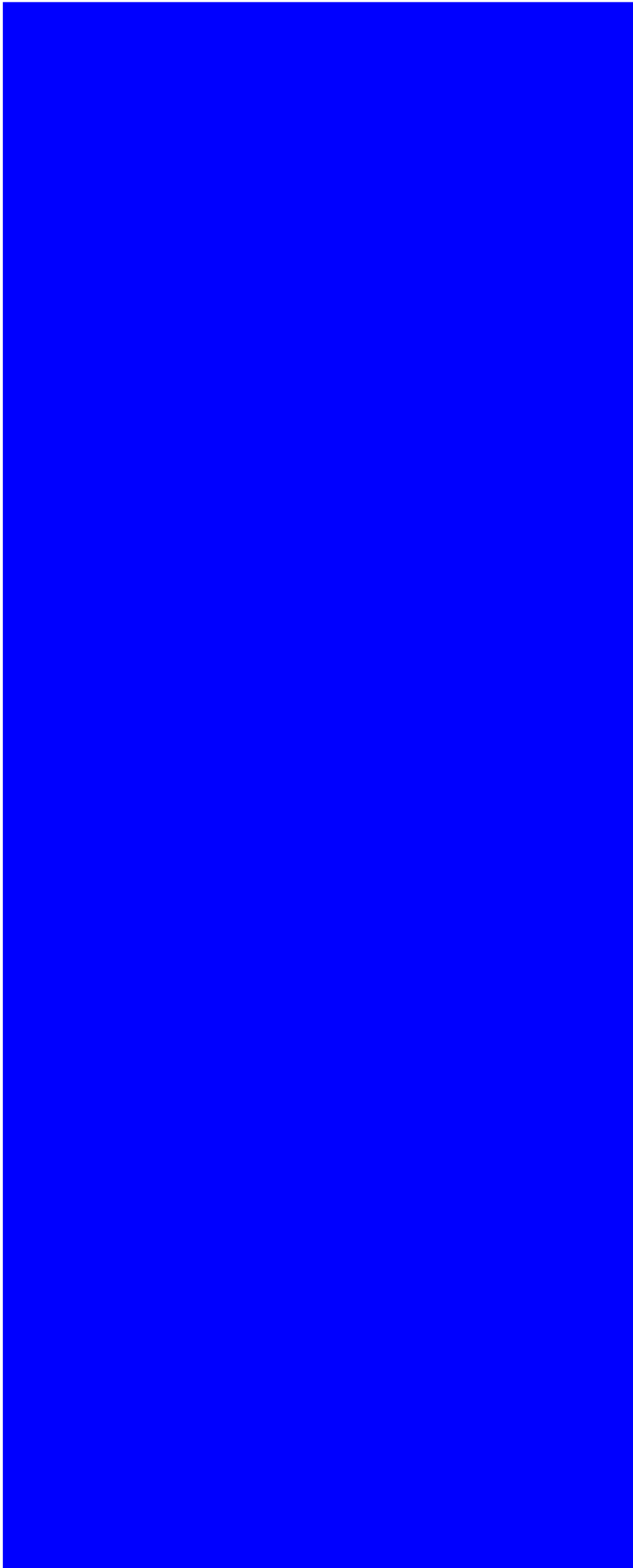






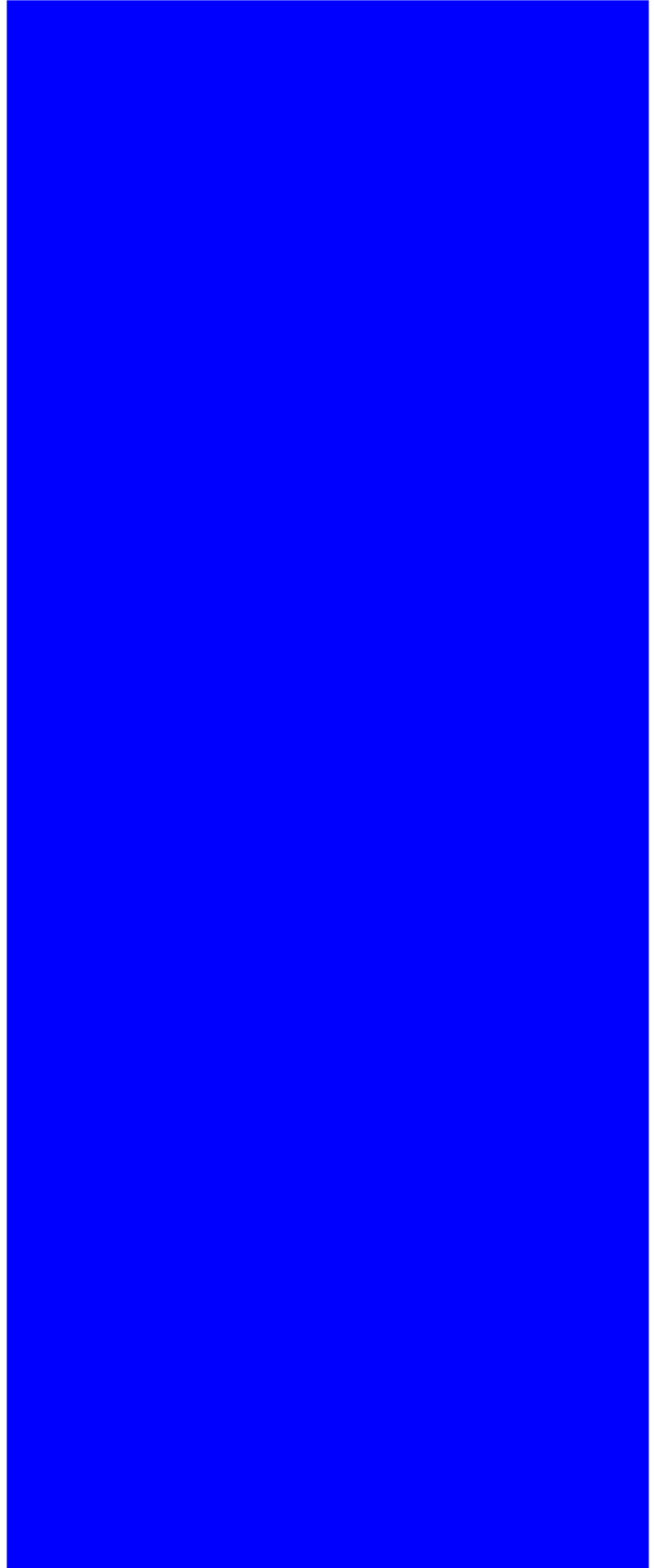
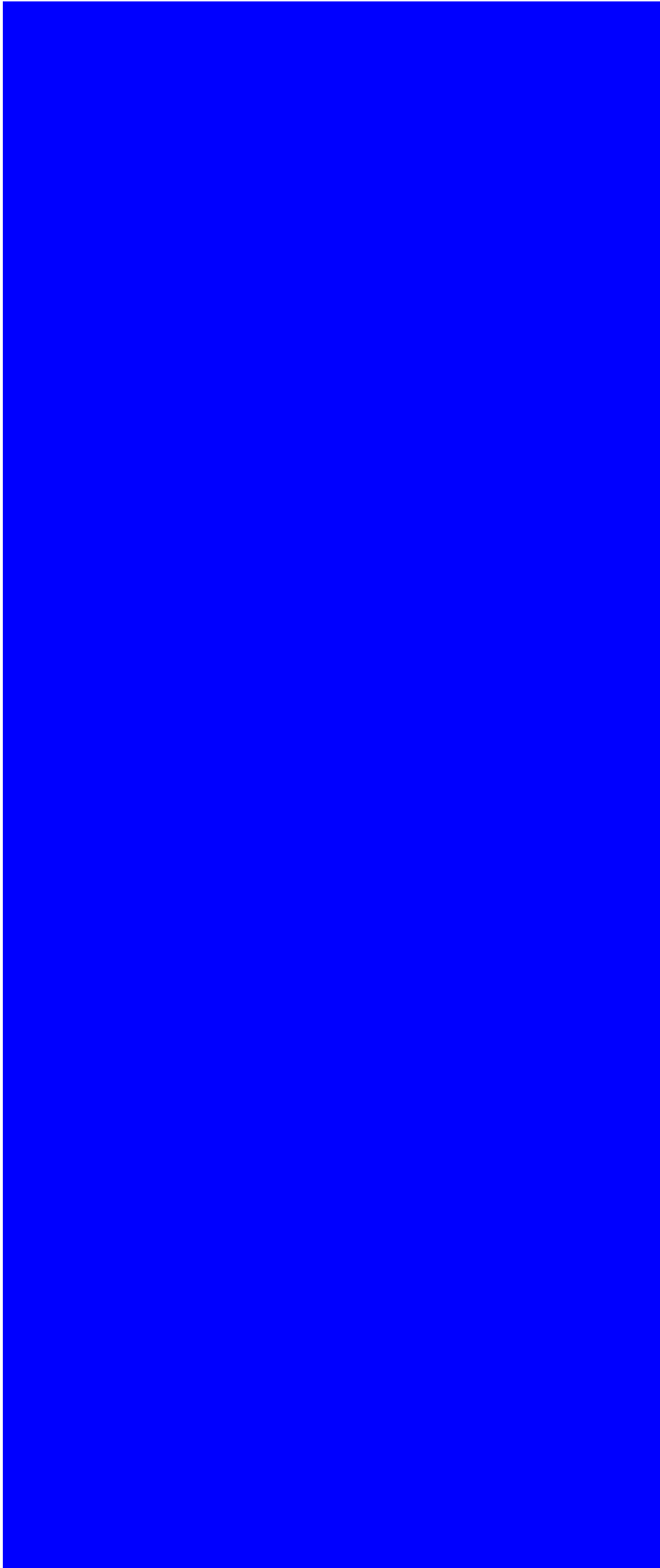


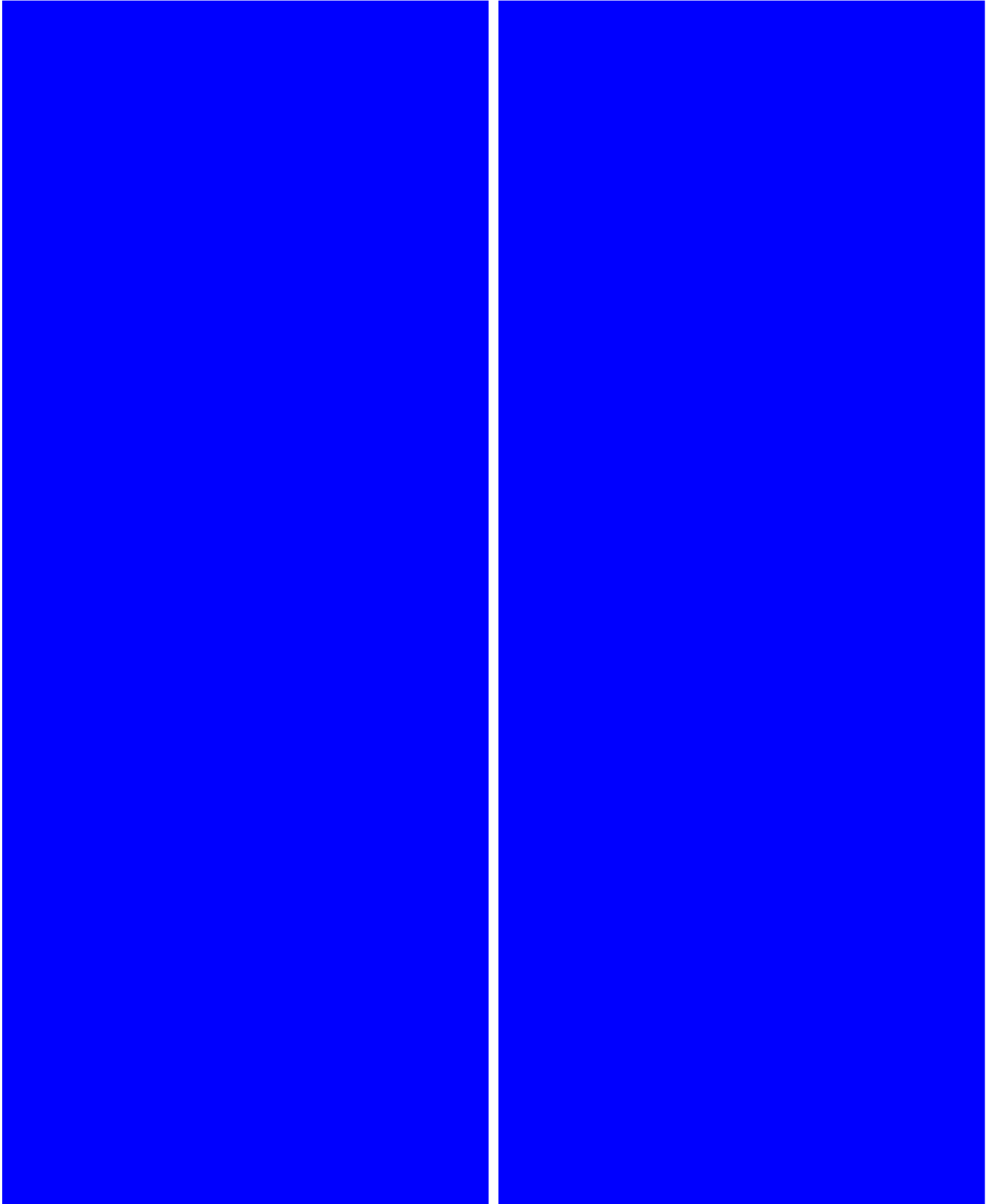




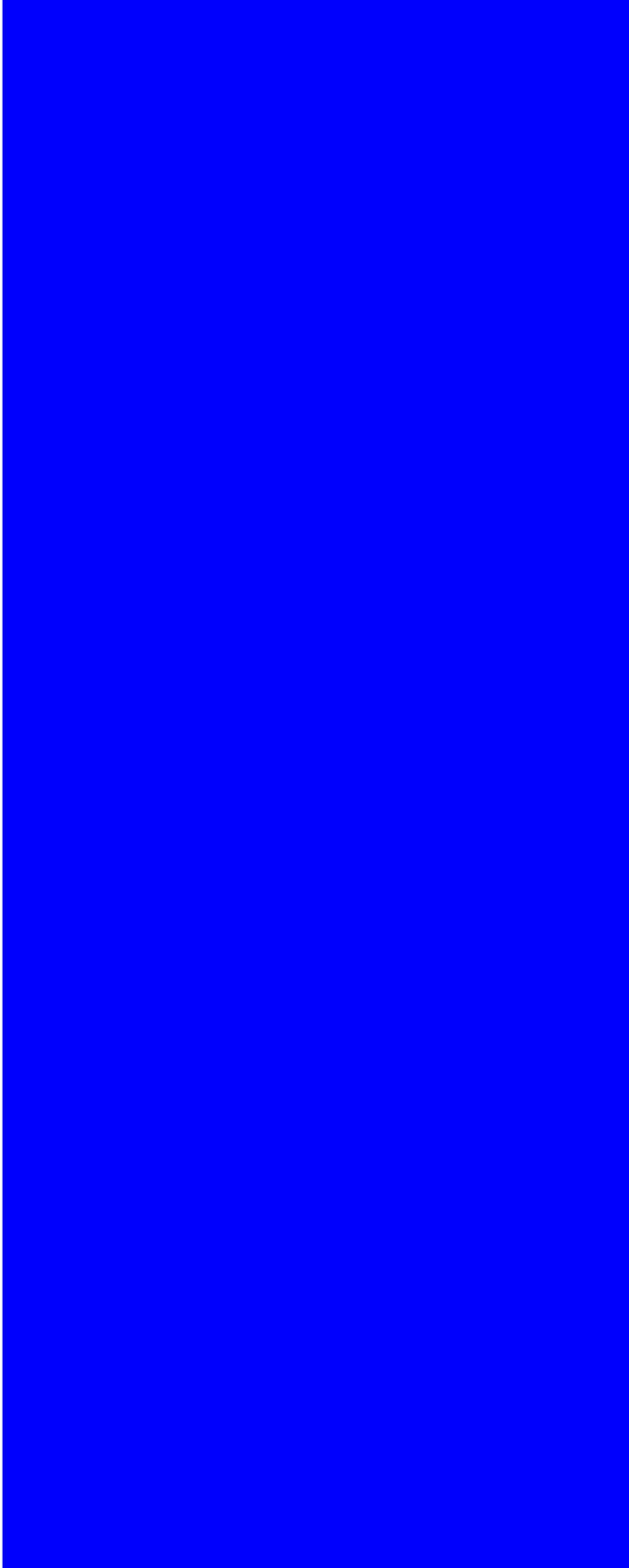
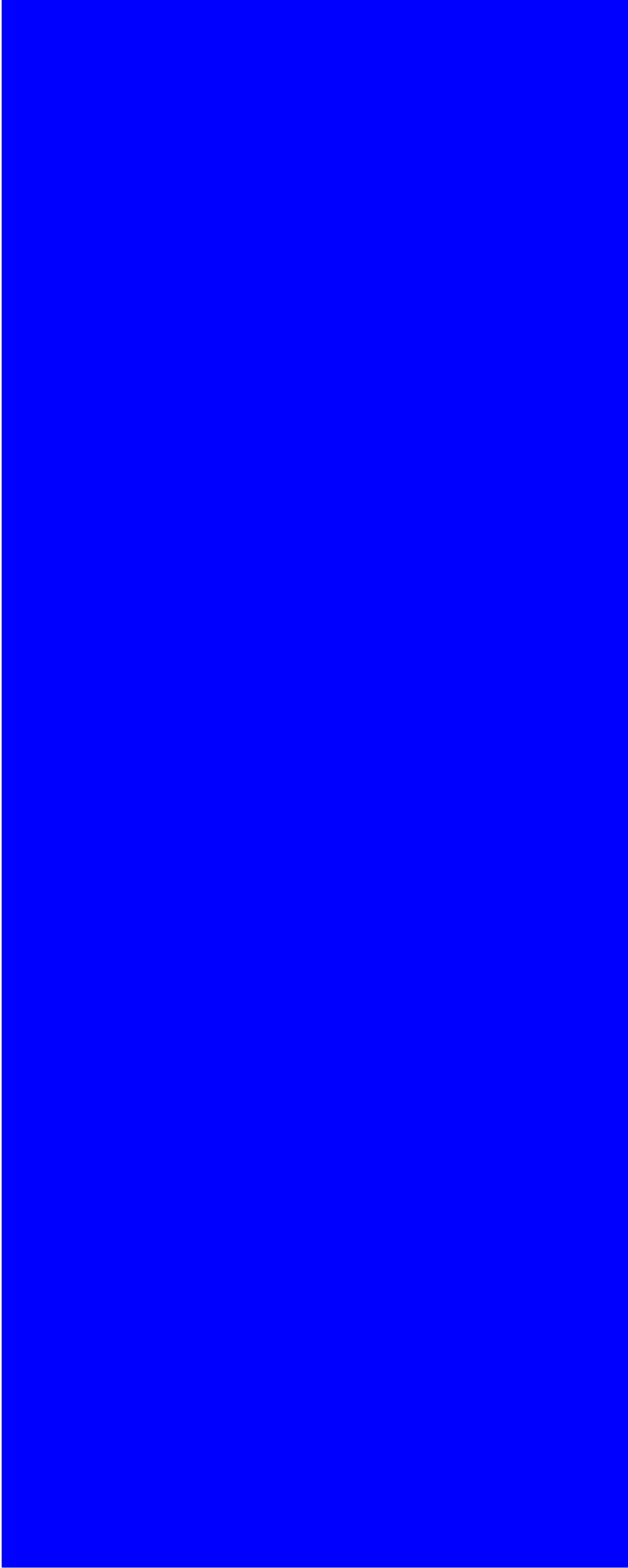
Final Regulations

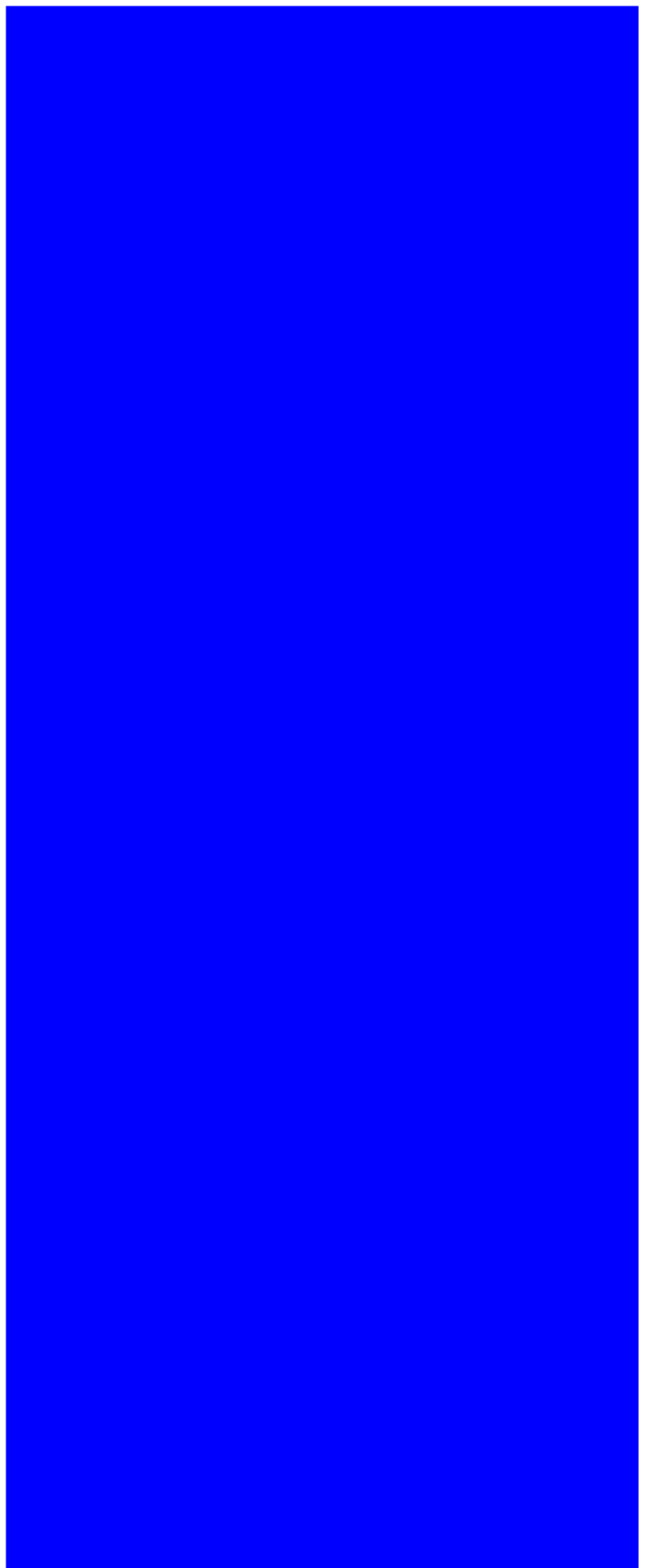
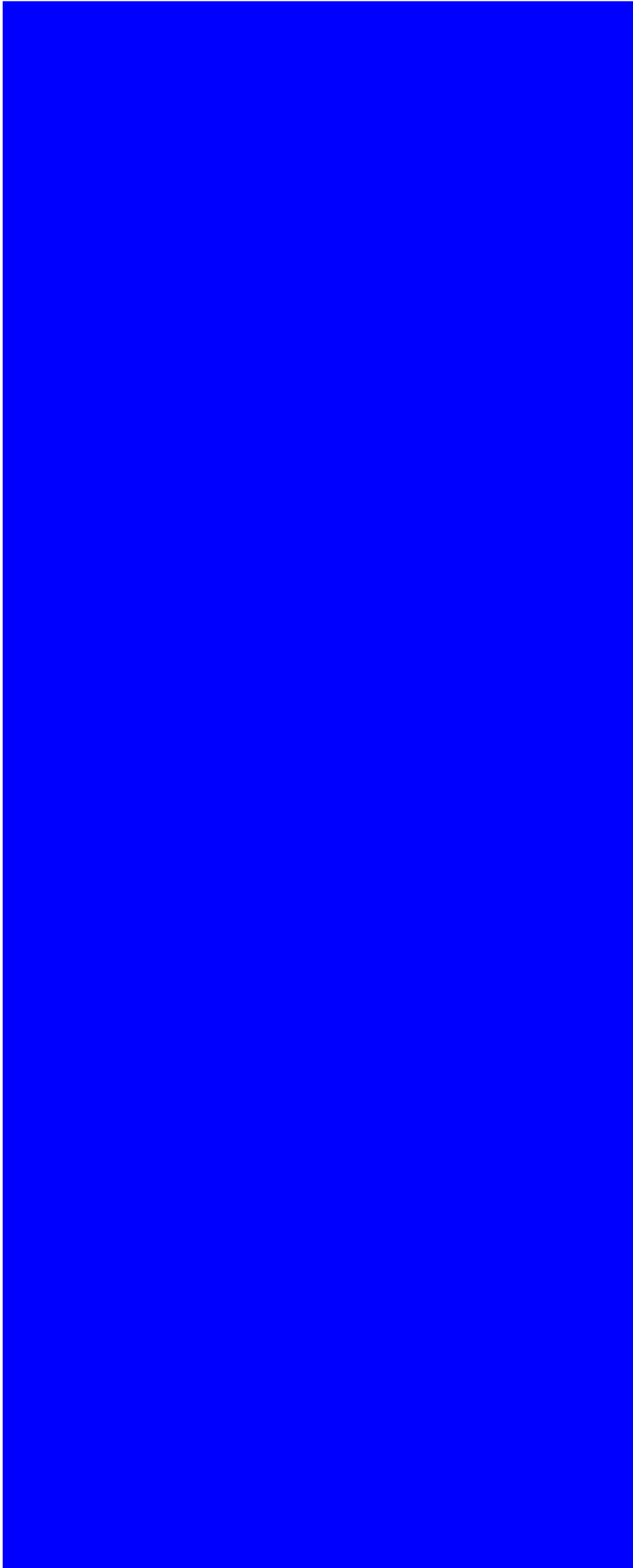
9 VAC 5-80-11. ~~Stationary source~~ *(Repealed.)*



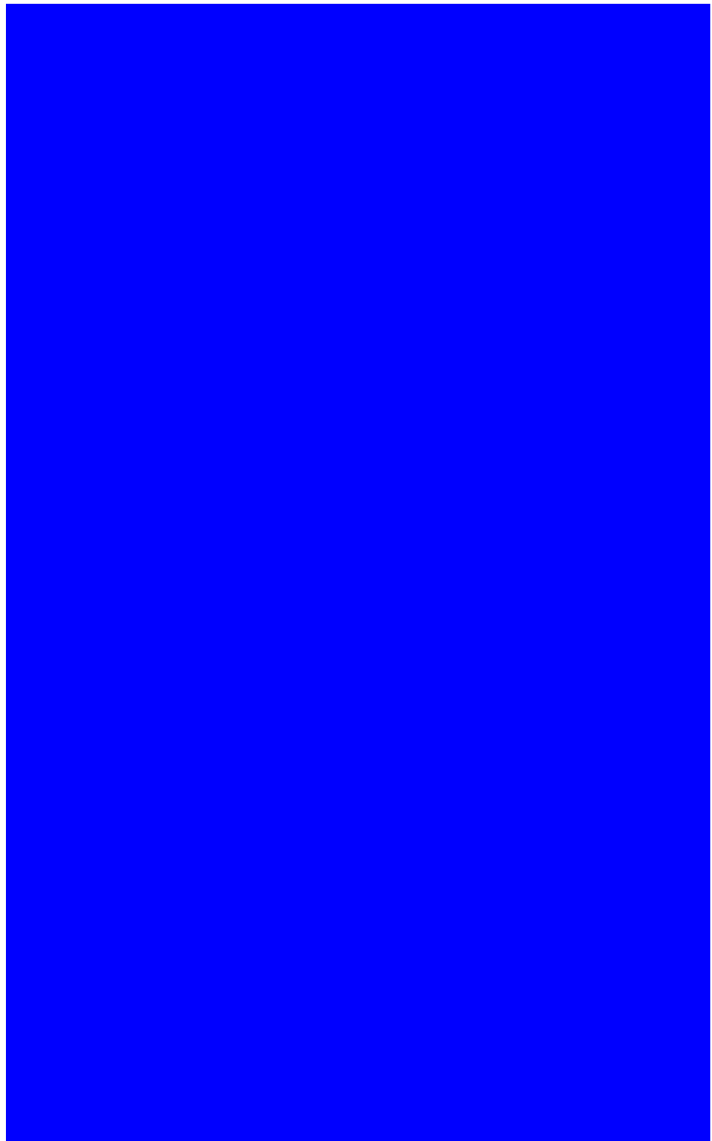


Final Regulations





Final Regulations



VA.R. Doc. No. R96-151; Filed May 28, 2002, 3:31 p.m.



RECORD OF HEARING AND SUMMARY OF PUBLIC COMMENT

As required by 40 CFR 51.102(e), the complete record of the hearing, along with a list of witnesses and the text of the written presentations or summary of the oral presentations, is located at the Air Division of the Department of Environmental Quality. The Department contact to access this information is the Director, Air Division.

As required by Section 2.1(h) of Appendix V of 40 CFR Part 51, a copy of the comments received and responses thereto is attached. Included is a brief statement of the subject, the identification of the commenter, the summary of the comment and the response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. All comments have been reviewed and responses developed based on an evaluation of the issues raised in consideration of the overall goals and objectives of the air quality program and the intended purpose of the document under review.

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**COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION H05
CONCERNING**

**MINOR NEW SOURCE REVIEW
(9VAC5 CHAPTER 80)**

INTRODUCTION

At the December 2009 meeting, the board authorized the department to promulgate for public comment a proposed regulation revision concerning minor new source review (NSR).

A public hearing was advertised accordingly and held in Richmond on April 14, 2010 and the public comment period closed on May 3, 2010. The proposed regulation amendments subject to the hearing are summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering minor new source review. A summary of the amendments follows:

1. The program is being changed to convert from a permit applicability approach for modifications which looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from the affected emissions units that make up the project. Currently applicability is based on the net emissions increase based on all the source-wide emissions changes due to or directly resultant from the physical or operational changes. The proposed program will base permit applicability on the emissions from only those emissions units that are new or that undergo a physical or operational change at a project. Debottlenecked emissions (collateral emissions increases and decreases from unchanged processes and equipment) and all emissions decreases from affected emissions units will no longer be considered in determining permit applicability.
2. The program is being changed such that Best Available Control Technology (BACT) determinations will be required for all emissions units that are subject to the minor new source review program. The requirement for a BACT determination will be applied to each pollutant emitted by the new source or project in amounts equal to or greater than

the exempt emission rate threshold; however, permit terms and conditions may be applied to any pollutant from the affected emissions units as may be necessary to support the BACT determination. Restrictions on the proportion of the potential emissions reductions that may be considered for a BACT cost-benefit analysis will be removed. The current minimum net emissions increase applicability thresholds for individual affected emissions units will also be eliminated.

3. In order to implement the program changes identified in items 1 and 2, the program is being changed to add definitions and other provisions that will facilitate the clear and consistent identification of the emissions units subject to the permit program (i.e., affected units). For a "new stationary source," the affected emissions units will be all emissions units located to an undeveloped site. For a "project" at an existing stationary source, the affected emissions units will be all new or added emissions units and all modified emissions units that make up the project.

4. The program is being changed such that reconstruction of an emissions unit by the replacement of some of its components will no longer be treated differently from the modification of an emissions unit. Such changes will no longer be exempt if the potential to emit is not increased, but instead will only be exempt if the increase in the emissions rate is less than the exempt emission rates for a modified stationary source, just like any other modified emissions unit. Reconstruction of an emissions unit by replacing the entire emissions unit will continue to be exempt as a "replacement of an emissions unit" as long as the potential to emit does not increase as a result of that replacement. Reconstruction will only exist in the minor new source review program as it pertains to its applicability under the federal new source performance standards in 40 CFR Part 60.

5. The program is being changed such that certain transportable engines will no longer be considered as nonroad engines that are excluded from the definition of a stationary source. Emissions from such engines may now be subject to the provisions of the minor new source review program and subject to emissions control requirements.

6. The exemption for certain sized fuel burning equipment is being changed to (i) expand the exemption to include space heaters, (ii) reduce the maximum exemption size for natural gas-fired fuel burning equipment, and (iii) in ozone nonattainment and maintenance areas, aggregate similar types of fuel burning equipment that are included in a single project for the purpose of comparison with the exempt size criteria.

7. Exemptions are being added for (i) vegetative waste recycling/mulching operations, (ii) open pit incinerators subject to the open burning rule, and (iii) certain process testing and remediation projects that remain in existence for less than a year.

8. The program is being changed to remove the prohibition against exempting NSPS facilities.

9. Provisions are being added to provide for processing and issuing informational permit applicability determinations.

10. Provisions are being added to incorporate the federal requirements for the new PM_{2.5} air quality standard.

11. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program are being restructured to increase clarity.

12. Provisions are being added to allow terms and conditions of permits to be combined.

13. A number of other provisions have been rewritten to increase clarity, including: clarifying when to include fugitive emissions in determining permit applicability, how changes in stack height are subject to permit review requirements, how regulatory changes affect new and previous permit applications, which modifications are subject to public participation requirements, and how to make permit changes to accommodate exempt equipment replacements.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Richmond, Virginia on April 14, 2010. One person attended the hearing without offering testimony, and three additional sets of written comments were received during the public comment period. As required by law, notice of this hearing was given to the public on or about February 1, 2010 in the Virginia Register and in seven major newspapers (one in each Air Quality Control Region) throughout the Commonwealth. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT**: General support for the proposal.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We commend the department for its effort to streamline the Virginia minor NSR program requirements.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

2. **SUBJECT**: General support for the proposal.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA strongly supports revising Virginia's minor NSR regulations as proposed because it will greatly simplify the determination of whether a physical or operational change at a source triggers the minor NSR permitting requirements. This will streamline the permitting process and cut down on the delay and costs Virginia's businesses incur under the current minor NSR rules. This streamlining is not expected to have any significant effect on the level of statewide emissions. See the Department of Planning and Budget's Economic Impact Analysis, which states that "the effect of proposed changes on the statewide emissions and consequently on air quality is not expected to be significant." VMA's analysis leads to the same conclusion. We believe the air emissions impacts from switching from the source-wide applicability approach back to the individual-unit applicability approach will be a wash because some source changes that would not trigger minor NSR under the source-wide approach may trigger permitting requirements under the individual-unit approach and vice-versa. Thus, the greater regulatory certainty and reduced administrative burdens and costs of the newly revised minor NSR rules can be realized without jeopardy to air quality in the Commonwealth.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

3. **SUBJECT**: Best Available Control Technology (BACT) applicability for pollutants.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The regulations in 9VAC5-50-260 B and 9VAC5-50-260 D include new language authorizing the department to impose permit limits at its discretion on any air pollutant on the premise that such a limit is necessary in order to implement BACT for "for any regulated pollutant that may be emitted from any affected emissions unit." [Emphasis added.] The intent of this addition is not clear. BACT requirements should be focused on a pollutant-by-pollutant basis for affected

emissions units for which an emissions increase from that unit triggers minor NSR. To the extent that the addition of this new language is intended to allow the department to deviate from this approach for BACT, we oppose the language and suggest it be eliminated. Such a stringent and all-encompassing approach is overreaching and costly. It does not make sense to require costly emissions controls at units that are not undergoing a physical or operational change. Moreover, applying BACT to all projects could have the effect of deterring certain pollution control projects that are compromised by secondary equipment that would otherwise not be required to consider BACT.

RESPONSE: The implementation of BACT under 9VAC5-50-240 and 9VAC5-50-260 usually results in a new predicted emissions rate for one or more regulated pollutants emitted from a process or emissions unit. The predicted emissions rate of the primary pollutant of interest is usually reduced, but there are often collateral increases or decreases in other regulated pollutants associated with that change. These collateral increases and decreases represent new predicted emission rates associated with the proper operation of the process and any BACT imposed on that process. Failure to set (or change) enforceable emissions limits on those collateral pollutant increases or decreases represents a failure to properly characterize and enforce BACT. The department has historically set enforceable permit limits on all such regulated pollutants. This proposed language accurately represents the existing permitting process for Minor NSR. This new language also does not imply that BACT is applied to any emissions unit other than "affected emissions units," which are only those that are new or otherwise physically or operationally changed. Pollution control projects are no longer implemented under provisions of the minor NSR program and 9VAC5-50-260. No change is made to the proposal in response to this comment.

4. **SUBJECT:** Incremental BACT.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA objects to the proposal to delete the last sentence in the definition of BACT (9 VAC 5-50-250). This sentence sets out important criteria governing how BACT is determined in minor NSR permitting, in contrast to major NSR permitting. Most particularly, VMA objects to the proposed elimination of "the cost effectiveness of the incremental emission reduction achieved." Incremental cost-effectiveness is an extremely useful determinant in setting appropriate BACT in minor NSR permitting. It makes no sense to require a source owner to install a much more costly emission control device as BACT if minimal additional emission reductions are achieved at an exorbitant additional cost. This provision has been a consideration in Virginia's BACT regulations for years and the purported rationale for this proposed change in the Agency Background Document for this rulemaking provides no compelling reason to delete this provision now. Thus, VMA believes the last sentence in the current BACT definition should be retained.

RESPONSE: The last sentence in the current definition of BACT contained some useful information concerning how BACT determinations may be accomplished for smaller sources that do not require the formal top-down analysis required for Prevention of Significant Deterioration (PSD) sources. Under the current Minor NSR definition of BACT and existing permitting procedures, a cost-benefit analysis is usually necessary only when there is no presumptive BACT or when a source believes that a presumptive BACT determination is inappropriate. DEQ supports determining BACT based upon an incremental cost-benefit analysis if a presumptive BACT determination is lacking or inappropriate, but the language in the existing definition is ambiguous and could be read to require such analysis or to impose BACT that results in few controlled emissions for relatively large new sources or BACT that results in unenforceable emissions limitations. Instead of deleting the last sentence, it has been revised to clarify the intended additional considerations. This comment is appropriate and changes have been made to reflect the intent of this comment.

5. **SUBJECT:** Incremental BACT.

COMMENTER: Dominion Resources Services, Inc.

TEXT: In addition, the department proposes to eliminate the ability to evaluate "the cost effectiveness" of the incremental emission reduction achieved in the BACT determination process (accomplished by removal of the last sentence in the current BACT definition in 9VAC5-50-250 C). We strongly oppose this change. Incremental "cost effectiveness" is a very useful and economically efficient determinant in setting appropriate BACT in minor NSR permitting. It makes no sense to require a source owner to install a much more costly emission control device as BACT if minimal additional emission reductions are achieved at an exorbitant additional cost. This provision has been a consideration in Virginia's BACT regulations since 2002 in order to allow consideration of additional factors when making BACT determinations for sources subject to minor NSR as opposed to major NSR PSD review, and the department has provided no compelling justification for this proposed change. Air quality in Virginia has been steadily improving. "On the books" and "on the way" emission reductions in a variety of federal and state programs for both stationary and mobile sources will provide additional air quality improvements in the Commonwealth. Requiring stringent and potentially costly emission controls for minor emissions increases from small sources with little or no consideration of the environmental significance of the emissions increases relative to the cost of emission controls is punitive and simply not warranted. We urge the department to retain the current definition of BACT that allows for evaluation of the cost-effectiveness of incremental emission reductions.

RESPONSE: See the response to comment 4. Deletion of the last sentence does not eliminate the ability to evaluate the cost effectiveness of incremental emission

reduction any more than the lack of such language in the same definition used for major new source review precludes such consideration. Nor does it mandate more costly emissions controls. The primary consideration for BACT under minor NSR will remain presumptive BACT for similar sources where one has been established and recent BACT for similar sources when there has been no presumptive BACT established by the board. When a cost-benefit analysis indicates that a presumptive BACT or a recent BACT is inappropriate, the remaining language allows the more appropriate BACT just as it did prior to 2002. However, instead of deleting the last sentence, it has been revised to clarify the intended additional considerations. This comment is appropriate and changes have been made to reflect the intent of this comment.

6. **SUBJECT**: BACT Applicability for individual emissions units.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: BACT should be applied only to the control of regulated air pollutants from affected emission units "for which there would be an uncontrolled emission rate equal to or greater than the [exemption] levels in 9VAC5-80-1105 C and D" (as applicable). The way 9VAC5-80-260 B and C are worded, BACT would apply to each and every "affected emissions unit" that is part of the new stationary source or "the project" if the uncontrolled emission rate of the new stationary source or project would exceed the applicable exemption level. VMA does not believe it makes any sense from an economic or environmental stand point to subject an emissions unit to a control technology requirement when emissions from that unit will not be substantial (in the case of new stationary source) or increase substantially (in the case of an emissions unit at an existing source). For example, requiring BACT at an affected emissions unit for an insubstantial 2 tpy increase in VOC emission from that unit makes little or no sense. The best gauge of "substantial" would be the exemption levels in 9VAC5-80-1105 C and D. This approach could be expressed by a simple wording changes such as: "An affected emissions unit shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emissions rate of the unit equal to or greater than the levels in 9VAC5-50-1105 D."

RESPONSE: It is inconsistent with the new source-wide applicability concept to exempt individual emissions units from a meaningful BACT determination, especially when the most conservative method of determining BACT, the cost-benefit analysis, would demonstrate that there are cost-effective methods of controlling emissions from one or more individual emissions units. The concept of BACT centers around the determination of what ways of reducing emissions are available that are both technologically feasible and economically reasonable. Artificially removing individual emissions units from consideration through an applicability determination (before a meaningful cost-benefit analysis is made) biases the cost-benefit analysis by discounting valid emissions reductions achievable through a technologically feasible

BACT. No change is made to the proposal in response to this comment.

7. **SUBJECT**: BACT and debottlenecked emission units.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of continuing to apply BACT only to the physically or operationally changed emissions units and not to debottlenecked emission units.

VMA has expressed support of the amendment to the BACT provisions in 9VAC5-50-260.C to clarify that BACT does not apply to emission units that themselves do not undergo a physical or operational change, e.g., "debottlenecked" emission units. This has been EPA's and Virginia's longstanding approach. (See current 9VAC5-50-260 C: "This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur . . . **as a result of physical change or change in the method of operation in the unit.**" [Emphasis added.]) This should remain Virginia's approach. It makes no sense from a cost-benefit standpoint to require the expenditure of money for emission controls at a unit that itself is not undergoing a physical or operational change. It only makes sense to couple the cost of emission controls to the cost of modifying the unit. Furthermore, from a legal perspective, it may be unlawful to impose an NSR permitting requirement on an existing piece of equipment that itself is not undergoing a change that would trigger NSR. Typically it takes a higher threshold than merely permitting a source modification, e.g., a NAAQS violation, to trigger a control requirement at an existing piece of unmodified equipment, e.g., the imposition of reasonably available control technology in a nonattainment area. In short, Virginia's regulations should be clear that BACT applies only at a unit that itself undergoes a physical or operational change resulting in a nonexempt emissions increase from that unit.

VMA also strongly supports the regulatory changes necessary to make it clear that BACT is required only at "affected emissions units," not upstream or downstream "debottlenecked" units that are not modified. It has been longstanding EPA and department policy that BACT is applied only to existing emission units that themselves undergo a modification. See, for example, EPA's New Source Review Workshop Manual, Draft 1990, Section B.II, BACT Applicability ("The BACT requirement applies to each individual new or modified affected emissions unit").

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

8. **SUBJECT**: BACT and uncontrolled emission rates.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to apply permit emissions limits representing BACT to any regulated pollutant emitted by any emissions unit at a new stationary source when the uncontrolled emissions rate of that pollutant from the source is greater than the exempt emission rate threshold. . . . The costs and benefits of the proposal to apply permit emissions limits representing BACT to any regulated pollutant emitted by any new or changed emissions unit in a project when the uncontrolled emissions rate increase of that pollutant from the project is greater than the exempt emission rate threshold.

VMA believes it makes no sense to apply BACT to new or modified emission units that would have uncontrolled emission rates below the relevant exemption rate thresholds. Take, for instance, the example of a project at an existing source where four emission units are modified resulting in a total 12 ton increase in the uncontrolled emission rate of VOC at the source. This source-wide increase is above the 10 tpy VOC exemption threshold rate in proposed 9VAC5-80-1105 D 1 so that this project would not be exempt from minor NSR review. However, suppose each of the four emission units (affected emission units) at the source would experience at most a 3 ton/year increase in VOC uncontrolled emission rate. It doesn't make sense to impose BACT on each of these small emission increases. It would not be cost effective.

RESPONSE: See the response to comment 6. No change is made to the proposal in response to this comment.

9. **SUBJECT**: BACT applicability for pollutants.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to apply such permit emissions limits to other pollutants emitted by new or changed emissions units that may not exceed the exempt emission rate threshold as may be necessary to implement a BACT determination.

VMA objects to this vague language proposed in 9VAC5-50-260 B and C

authorizing the department to impose permit limits at its discretion on any pollutant on the premise that such a limit is "necessary to implement" BACT for any other regulated pollutant. Once again to be clear, BACT should apply only to those regulated pollutants, on a pollutant-by-pollutant basis, emitted from any new affected emissions unit where the uncontrolled emission rate of the pollutant from that unit exceeds the exemption rate threshold for that pollutant specified in 9VAC5-80-1105 C 1 or from any modified affected emission unit where the increase in the uncontrolled emission rate of that pollutant from that unit exceeds the exemption rate threshold for that pollutant specified in 9VAC5-1105 D 1. There is too much opportunity to "back door" the BACT requirement to small emissions changes at units using this vague "necessary to implement" language. VMA's members advocate certainty in these revised regulations and we cannot discern any guiding principles for the implementation of this discretionary authorization for the department to impose BACT where clear applicability criteria are otherwise lacking. This language is totally unacceptable and should be deleted from 9VAC5-50-260 B and C.

RESPONSE: See the response to comment 3. No change is made to the proposal in response to this comment.

10. **SUBJECT:** Individual unit applicability approach to permit applicability.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The department proposed to convert from the source-based applicability approach of the current program back to an individual unit-based applicability approach in order to simplify the determination of whether a physical or operational change at a source triggers minor NSR permitting requirements. While we fully support efforts to simplify and streamline the permitting process, and agree that the rule should be amended to incorporate the individual unit approach, we believe the regulations should retain a netting option as an option. This would allow a permit applicant the opportunity to net out while providing the department with assured continued protection of air quality since the reductions achieved through netting would be enforceable measures.

RESPONSE: Netting is a process of using federally enforceable emission reductions to offset proposed emissions increases, as a way of bypassing more stringent new source review program requirements. This works well for the major new source review programs because the emission reductions may be made federally enforceable through the minor NSR program, which has less stringent review, emission control, and public participation requirements. There is no acceptable alternative new source review program other than Minor NSR through which netted emission reductions may be made federally enforceable, so there is no way to make netting work under minor new source review. This incompatibility was the primary reason that this amendment was necessary. No change is made to the

proposal in response to this comment.

11. **SUBJECT**: Permit applicability and designation of affected facility.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the clarification provided in 9VAC5-50-240.C that the provisions of this article do not apply to pollutants regulated under 9VAC5-60 (Hazardous Air Pollutant Sources).

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

12. **SUBJECT**: BACT applicability for new sources or projects.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The department needs to make clear that BACT is only required at "an affected emission unit" for which there would be an uncontrolled emission rate for a regulated pollutant equal to or greater than the exemption levels in 9VAC5-80-1105 C (for new sources) and D (for modifications or projects) for that pollutant. It should not be applied to upstream or downstream units that are not modified. As proposed, subsections 9VAC5-50-260.B and 9VAC5-50-260.C could be interpreted to require the application of BACT to each and every "affected emissions unit" that is part of the new stationary source or "the project" if the uncontrolled emission rate of the new stationary source or project would exceed the applicable exemption level. It has been longstanding U.S. Environmental Protection Agency (EPA) and department policy that BACT is applied only to new emission units and existing emission units that themselves undergo a modification.

We suggest the following changes to the proposed regulatory text of this section to clarify this concept:

9VAC5-50-260 B: A new ~~stationary source~~ affected emissions unit shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emissions rate of the unit equal to or greater than the levels in 9VAC5-50-1105 C.

9VAC5-50-260 C: ~~A project~~ An affected emissions unit shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emissions rate of the unit equal to or greater than the levels in 9VAC5-50-1105 D.

RESPONSE: 9VAC5-50-260 A states the central requirement in this section, which is that no owner shall allow their "affected facility" to emit pollutants in excess of the

BACT emissions limitation. This concept of requiring BACT for the "affected facility" (which is defined in 9VAC5-10-20 C, and may include one or more emissions units) is an existing requirement and has not been changed. Clarification of subsection B is unnecessary because all emissions units at a new stationary source are "affected emissions units". The Department's proposed change to subsection C explicitly states that the "requirement applies to each affected emissions unit in the project" so clarification in this subsection is also unnecessary. No change is made to the proposal in response to this comment.

13. **SUBJECT**: Treatment of fugitive emissions in determining permit applicability.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The proposed amendments to 9VAC-5-80-1100 D would change how fugitive emissions are treated in determining minor NSR applicability. The approach in the current version of the regulations is that the addition of fugitive emissions to stack emissions that, by themselves, are below the minor NSR applicability thresholds will not be counted and cause a source or modification to trigger the minor NSR applicability thresholds. The department proposes to alter this longstanding approach of not including fugitive emissions to determine minor NSR applicability to an approach that minor NSR is triggered if fugitive emissions are added to stack emissions and that sum exceeds the minor NSR applicability thresholds. The department's rationale for the proposed change, "to avoid confusion about the meaning of this provision" is difficult to discern. We believe the meaning (that fugitive emissions are not counted if the inclusion of fugitives causes a stack emissions increase otherwise below the minor NSR threshold to exceed the threshold) is clear. There is no rationale for the change in approach that the department proposes. If the department believes this approach requires clarification, it should seek comment for clarification, not reverse it. Without adequate justification, 9VAC5-80-1100 D should remain as it has been – minor NSR is not triggered by the addition of fugitive emissions to otherwise exempt stack emissions.

RESPONSE: The proposed amendment to 9VAC-5-80-1100 D, taken together with the changes in 9VAC-5-80-1105 C 3 and D 3 do not change how fugitive emissions are treated in determining minor NSR applicability. The first sentence of the current requirement is unequivocal, "The fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article." The second sentence was less clear. Due to a misplaced word "only," it can be read either to exclude fugitives in the applicability determination every time fugitives make a difference, or to exclude fugitives only when they are the only emissions considered. The Department has interpreted the second sentence in the only non-trivial way possible, to the effect that fugitive emissions are included when determining applicability, unless they are the only emissions considered. It has been the longstanding approach of the department to include fugitive emissions in

the determination of Minor NSR applicability and not to exclude them, long before this language appeared in the regulation, but it may have been applied inconsistently in some cases because of this ambiguity. This amendment offers the best opportunity to correct and clarify this language, so that misinterpretation is unlikely in the future. No change is made to the proposal in response to this comment.

14. **SUBJECT**: Aggregation of contemporaneous increments.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The new subsection 9VAC5-80-1100 E adds the following language:

Where the construction of a new stationary source or a project is accomplished in contemporaneous increments that individually are not subject to approval under this article and that are not part of a program of construction of a new stationary source or project in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of any particular change under the provisions of this article. An incremental change is contemporaneous with the particular change and the date that the emissions increase from the particular change occurs.

The rationale for adding this new language is unclear. To the extent the intent of this provision is to address circumvention, that issue is already addressed through the anti-circumvention clause in 9VAC5-20-70 (General Provisions). There is also an anti-circumvention provision in the existing Article 6 rules at 9VAC5-80-1100 F.

We are concerned that this new provision can be interpreted to require the automatic aggregation of any and all emission increases from physical and operational changes at a facility during a five-year period. Emission increases from facility changes that are part of a single project or that are technically or economically dependent upon one another (and thus truly not separate projects) should be aggregated for purposes of determining minor NSR applicability. In contrast, emission increases from facility changes that are not directly related or dependent upon one another should be treated as separate projects for purposes of determining minor NSR applicability. This has been the longstanding approach of EPA and the department, and to the extent that subsection E is intended to alter this approach and impose a blanket approach where the department would require the automatic aggregation of otherwise separate and distinct projects, it should be deleted.

RESPONSE: This language is not new and it represents the "longstanding approach" of the regulation concerning circumvention in time. It existed in the applicability section of the previous version of the minor NSR (9VAC5-80-10 A 4)

and was used primarily to aggregate incremental changes over time which should have been, but were not, approved by the board as phases of the same project, and which had thereby improperly avoided permitting altogether or had avoided a proper BACT analysis by dividing up incremental emissions increases. It does not duplicate the circumvention requirement of 9VAC5-80-1100F, which contains the other two legs of circumvention; circumvention by a pattern of ownership and by a pattern of development over a geographic area. This requirement applies specifically to a "new source" or "project" and so it does not aggregate unrelated projects. No change is made to the proposal in response to this comment.

15. **SUBJECT**: New source performance standards (NSPS) limit on exemptions.

COMMENTER: Dominion Resources Services, Inc.

TEXT: With respect to the provisions regarding federal NSPSs in current 9VAC5-80-1100 E, we support the proposed deletion. There is no reason to limit the exemption of affected facilities subject to federal NSPSs by virtue of 9VAC5-80-1100 E 1 and 2 in the current regulations. We agree that automatically forcing NSPS-affected sources to apply for and obtain a minor NSR permit is not an efficient use of the agency's limited staff resources.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

16. **SUBJECT**: Grandfathering provision.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the addition of 9VAC5-80-1100 J, which clarifies that the previous provisions of this article will remain applicable for all permits for which applications are deemed complete (under 9VAC5-80-1160.B) prior to the effective date of these proposed amendments (when finalized).

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

17. **SUBJECT**: Fugitive emissions in determining permit applicability.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: The proposed amendments to 9VAC5-80-1100 D and 9VAC5-80-1105 C 3 and D 3 would substantially change the approach toward counting fugitive emissions in determining minor NSR applicability. The approach in the current version of the regulations is that the addition of fugitive emissions to stack emissions that are below the minor NSR applicability thresholds will not take a source or modification

over the minor NSR applicability thresholds. The proposal alters this longstanding approach of not including fugitive emissions to determine minor NSR applicability to an approach that minor NSR is triggered if fugitive emissions are added to stack emissions and that sum exceeds the minor NSR applicability thresholds. The department says the changes it proposes to 9VAC5-80-1100 D are "necessary to avoid confusion about the meaning of this provision." This is no rationale for the radical change in approach that is proposed. Moreover, confusion would actually arise from any across-the-board requirement to quantify fugitive emissions for purposes of determining minor NSR applicability. Existing emission factors for fugitive emissions from most types of facilities are characterized by a high degree of uncertainty. Furthermore, technologically and economically feasible means for measuring most fugitive emissions simply do not exist. Consequently, estimated quantities of fugitive emissions are highly suspect, and in the vast majority of cases, applying new source review to fugitive emissions becomes an exercise that values form over substance. Without adequate justification, 9VAC5-80-1100 D should remain as it has been – minor NSR is not triggered by the addition of fugitive emissions to otherwise exempt stack emissions. These same issues also apply to the exemption provisions of 9VAC5-80-1105 C 3 and D 3.

RESPONSE: See the response to comment 13. No change is made to the proposal in response to this comment.

18. **SUBJECT:** Applicability, aggregation.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: To the extent that 9VAC5-80-1100 E amounts to a rule of automatic aggregation of any and all emission increases from physical or operational changes at a facility during a five year period, VMA strenuously objects. VMA's concern is generated in part from the following statement in the Agency Background Document for the rulemaking: "The department is specifically seeking comment concerning the adequacy of the proposed regulation to address separate requests for exempt changes that would be subject to the new source review program if considered together." VMA is not sure what the department means by "separate requests for exempt changes." However, VMA objects to the addition of subsection E in 9 VAC 5-80-1100.

Emission increases from facility changes that are part of a single project or that are technically or economically dependent upon one another (and thus truly not separate projects) should be aggregated for purposes of determining minor NSR applicability. In contrast, emission increases from facility changes that are not directly related or dependent upon one another should be treated as separate projects for purposes of determining minor NSR applicability. This has been the longstanding approach of EPA and the department, and to the extent that 9VAC5-80-1100 E is intended to alter this approach, it should be deleted. If the department

intends to apply 9VAC5-80-1100 E as an automatic aggregation provision, then it must notify the General Assembly that this provision is more restrictive than the applicable federal requirements.

RESPONSE: See the response to comment 14. No change is made to the proposal in response to this comment.

19. **SUBJECT**: New source performance standards (NSPS) limit on exemptions.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: With respect to the provisions in current 9VAC5-80-1100 E, VMA supports their deletion. There is no reason to limit the exemption of affected facilities subject to federal NSPSs as is the case by virtue of 9VAC5-80-1100 E 1 and 2 in the current regulations. VMA agrees that automatically forcing NSPS-affected sources to apply for and obtain a minor NSR permit is not an efficient use of the agency's limited staff resources.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

20. **SUBJECT**: Grandfathering provision.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA supports the certainty provided by 9VAC5-80-1100 J.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

21. **SUBJECT**: Aggregation of exempt equipment.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to aggregate the capacities of all similar equipment at a new source or a project that is now individually exempted by source type and size when considering whether or not that equipment should be exempt from permitting. . . . The costs and benefits of limiting the aggregation of the equipment capacities for this exemption to sensitive areas (such as non-attainment areas and maintenance areas) as opposed to allowing use of the exemption state-wide.

VMA believes each separate piece of emitting equipment should be considered individually in determining whether it is exempt from the minor NSR requirements. Further, the exemption should apply uniformly throughout the Commonwealth. There is no basis for distinguishing between attainment, nonattainment and maintenance areas in applying the size exemptions. The size exemptions are predicated on the notion that it makes no sense to subject smaller emission units to BACT and air permitting requirements. This rationale applies equally to all small pieces of equipment throughout the Commonwealth. Thus, there would be unjustifiable additional costs without demonstrable benefits if this exemption were denied to small pieces of equipment that happen to be located in nonattainment or maintenance areas.

RESPONSE: Historically, certain types of emissions units have been exempt on an emissions unit by emissions unit basis. As time progressed, it was recognized that if there were enough small emissions units constructed together that they could represent a significant increase in emissions and that, using efficiencies of co-location and type of emissions, they could together justify some additional emissions control. This was the basis for the emissions rate-based exemptions for facilities. The basis for considering additional emissions controls in sensitive areas is also well established both federally (as in the establishment of additional controls in nonattainment areas) and in state regulation (such as applying existing source standards for ozone only within VOC emission control areas). This provision does not imply that additional controls will be implemented upon the previously exempted types of equipment, only that they may be subjected to a cost-benefit analysis to determine if there are technologically feasible and economically reasonable controls that might result in beneficial emissions reductions in these sensitive areas. No change is made to the proposal in response to this comment.

22. **SUBJECT:** Aggregation.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The adequacy of the proposed regulation to address separate requests for exempt changes that would be subject to the new source review program if considered together.

VMA's members are strongly opposed to any such blanket approach whereby the department would automatically aggregate otherwise separate and distinct projects for purposes of triggering NSR requirements. We note that the department appears to have been implementing this approach on an ad hoc basis for some time, and VMA members have objected to this as unlawful and beyond the authority of the agency. The department has in some instances persisted with this illegal approach

nonetheless. VMA will seriously consider appropriate legal action should the department persist with this approach and try to legitimize it with this proposed regulatory amendment.

RESPONSE: See the response to comment 21. No change is made to the proposal in response to this comment.

23. **SUBJECT**: Debottlenecking.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to discontinue the practice of considering emissions increases from debottlenecked emissions units when evaluating a project for minor NSR program permit applicability.

The switch from the source-wide net emissions increase approach to the unit-by-unit uncontrolled emissions approach dictates that emissions from emission units that themselves do not undergo a physical or operational change cannot be included in determining minor NSR applicability. There is no way to make this critical switch in applicability and at the same time add in emissions from "unaffected" units. Nor should emissions from debottlenecked units be included for purposes of determining minor NSR applicability. If such units are not subject to the BACT requirement (as has always been the case under EPA and Virginia regulations), it makes no sense to use debottlenecked emissions just to trigger minor NSR permitting and hence the BACT requirement for other units at the source that will undergo a physical or operational change. To simplify matters, simply take debottlenecked units out of the applicability equation.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

24. **SUBJECT**: Exemption for regulated pollutants for which a significant emission rate has not been established.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We strongly support the proposed new provision that would exempt the emission increases for a regulated air pollutant for which a minor source significant emission rate has not been established (9VAC5-80-1110 C, revised definition of "significant"). This would alleviate the requirement for a project that resulted in any emission increase, no matter how miniscule, and the requirement for every new source to undergo minor NSR for a regulated pollutant in the absence of an

established significant emission rate for that pollutant. We believe this provision is crucial now that greenhouse gas emissions are considered regulated pollutants under the Clean Air Act and would prevent a possible scenario where virtually every new source or project would require a preconstruction permit.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

25. **SUBJECT:** Permit exemption for portable emissions units.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The requirement in 9VAC5-80-1105 A 1 that emissions from a portable emissions unit must be secondary emissions (subdivision c (1) of this subsection) unnecessarily narrows the availability of this exemption and should be deleted. There may be instances where a portable emission unit may be needed to augment a source's routine production. Such a unit would not qualify as a temporary facility, would not meet the definition of "secondary emission" in 9VAC5-80-1110 C, and subsequently would not qualify for the proposed exemption.

The location of a portable emission unit at a site may be exempt if it meets certain conditions enumerated in 9VAC5-80-1105 A 1 c (1) through (6). The first of these is that "any new emissions from the portable unit are secondary emissions." This condition appears to virtually eliminate the portable unit exemption, since emissions from most portable units will never meet the definition of "secondary emissions" (emissions that "do not come from the stationary source itself"). Thus, 9VAC5-80-1105 A 1 c (1) should be deleted. Furthermore, subdivision (3), requiring emissions from portable units to be temporary, should also be deleted. The preceding subdivision (2) requires a portable emissions unit to be appropriately permitted, so there is no rational basis for requiring emissions to be temporary.

RESPONSE: The basis for the exemption for portable emissions units is that they are already permitted for a certain amount of emissions. Their special permit allows them to emit that much per year regardless of their location (within limits). If these sources alter their configuration or otherwise modify or construct new emissions units then they are subject to new source review requirements like every other source. This exemption is only for relocation, not for modification of the portable facility or construction of new emissions unit. Secondary emissions, however, are going to occur also. The act of relocation alone will produce secondary emissions. This clarifying language has been in place in guidance and as conditions of these portable facility permits for well over a decade, and do not interfere with relocation under this exemption. No change is made to the proposal in response to this comment.

26. **SUBJECT**: Permit exemption for replacement units.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: We support the new approach to replacement units proposed in 9VAC5-80-1105 A 2 to the extent that the term "removed" is interpreted to mean removed from service during normal operation of the replacement unit. However, the condition for a replaced emissions unit as proposed could be read to mean that the replaced unit must be physically removed from the source, which would be overly restrictive and unnecessary to assure compliance.

We also believe this approach should be applied to not only permanent replacements but also to temporary replacements. This would cover, for instance, the use of a temporary replacement boiler while a facility's regular boiler is undergoing repairs. However, to make this approach work, the regulations would have to accommodate a brief shakedown period when the temporarily replaced boiler would be operated at the same time as the replacement boiler.

In order to both clarify the intent of this replacement condition and accommodate temporary replacements, we suggest subsection A 2 a (5) be changed to read:

The replaced emissions unit is either removed from normal service during the period the replacement unit is operated or permanently shut down in accordance with the provisions of 9VAC5-20-220. Normal service does not include a limited shakedown period when both the temporarily replaced emissions unit and the replacement emissions unit may be operated simultaneously in order to facilitate the return of the replaced unit to normal service.

RESPONSE: Support for the proposal is appreciated. The term "removed" is not qualified in the regulatory language to mean "removed from service." Use of this exemption for temporary facilities was discussed during advisory group meetings and was discarded as not consistent with minor new source review. No change is made to the proposal in response to this comment.

27. **SUBJECT**: Permit exemption for stack height elevation reduction.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the exemption in 9VAC5-80-1105 A 2 b for projects involving a reduction in stack elevation outlet for stacks that serve facilities that have previously been determined to be exempt from the minor NSR program.

RESPONSE: Support for the proposal is appreciated. No change is made to the

proposal in response to this comment.

28. **SUBJECT**: Permit exemptions, reduction of exemption level for natural gas-fired fuel burning equipment.

COMMENTER: Dominion Resources Services, Inc.

TEXT: In 9VAC5-80-1105 B 1 a (4), the department proposes to change the exemption for natural gas-fired fuel burning equipment from 50,000,000 Btu/hr to 30,000,000 Btu/hr. However, no explanation has been provided for this reduction, which would expand the number of sources and projects that would be subject to minor source NSR. This proposed change should not be made without reasonable justification.

RESPONSE: When the proposal was being drafted, there was an NSPS that was applicable to 30,000,000 Btu/hr natural gas-fired fuel burning equipment. Those provisions no longer exist. This comment is appropriate and changes have been made to reflect the intent of this comment.

29. **SUBJECT**: Permit exemption requiring aggregation of emission thresholds in nonattainment areas.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The addition of 9VAC5-80-1105 B 1 b requires the exemption levels for fuel burning equipment in 9VAC5-80-1105 B 1 a to be applied in the aggregate for each fuel type in ozone nonattainment and maintenance areas rather than on an individual basis. No justification for this requirement has been provided. To the extent the department believes additional measures may be needed to address local nonattainment issues, it can enforce such measures on a case-by-case basis and should not use a blanket approach in the context of minor NSR to do so. This provision should be eliminated.

RESPONSE: New source review permits are the tools for implementing additional measures to address the need for additional emissions controls for new or modified sources on a case-by-case basis. As time goes on, control technology gets better and cheaper. The need to investigate the cost effectiveness of such controls in sensitive areas, particularly where achieving attainment is difficult, is the justification for limiting this new source review permit program exemption in those areas. No change is made to the proposal in response to this comment.

30. **SUBJECT**: Permit exemption for temporary facilities.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: We support the addition of new provisions to exempt "temporary facilities" from minor NSR permitting (9VAC5-80-1105 B 13) and believe the proposed conditions under which this exemption would apply are generally reasonable. Under the federal prevention of significant deterioration (PSD) program, temporary emissions are ones which last for two years unless the Administrator determines that a longer period would be appropriate (45 FR 52728). Since the magnitude of emissions subject to minor NSR is less than the amount of emissions evaluated under PSD review, it seems reasonable that a minor NSR program could also define temporary emissions as those that last for no more than two years as well. Furthermore, this would provide added incentive for undertaking temporary projects such as test burns of alternative renewable fuels such as switchgrass or other non-fossil fuels. If a unit's uncontrolled emission rates would not exceed these exempt emission rates, the unit would be exempt anyway and wouldn't need to fit under the new temporary unit exemption. Accordingly, we request increasing the 12-month temporary emission exemption as proposed in 9VAC5-80-1105 B 13 a to two years.

RESPONSE: Averaging emissions over a year is the EPA-accepted basis for exemptions by emissions rate. The exemption was created with this in mind, so that it would be acceptable to EPA under existing NSR rules. These facilities would not be exempt under the existing Article 6 without the additional qualifications stated in that exemption. No change is made to the proposal in response to this comment.

31. **SUBJECT**: Permit exemption for alternative fuels or raw materials.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: 9VAC5-80-1105 A 1 e addresses a permit exemption for switches to alternative fuels or raw materials. Subdivision (1) of this subdivision reflects recent changes to the State Air Pollution Control Law by the General Assembly designed to make it easier for source owners to switch to alternative fuels and raw materials. However, subdivision (2) appears to eliminate the exemption by requiring that any such switch "not be subject to review under this article [6] as a project." ("Modification" is changed from the current wording to "project" in the proposed wording.) However, aren't all projects "subject to review" under the minor NSR regulations and thus ineligible for this exemption? In order to preserve the legislative intent of this exemption, subdivision (2) must be deleted.

VMA would also like to point out that any switch to an alternative fuel or raw material that does not increase the uncontrolled emission rate of any regulated pollutant is, by definition, not a "modification" and, therefore, does not trigger the requirement to obtain a minor NSR permit prior to the switch. Thus, VMA wonders about the general utility of the exemption in 9VAC5-80-1105 A 1 e which, by virtue of the first sentence in subdivision (1), requires a decrease in emissions (except for certain switches from residual oil to animal, fish or vegetable oil fuels). For example, if a

raw material switch would result in decreased emissions, it would inherently, by virtue of the definition of "modification," not require a minor NSR permit, and in such a case, the first sentence in 9VAC5-80-1105 A 1 e (1) would be meaningless but misleading.

RESPONSE: The exemption in 9VAC5-80-1105 A 1 e explicitly ensures that such alternative fuel switches, under certain conditions, will not meet the definition of modification and will not be subject to review under Article 6. The exemption is written to comply with statutory language. However, differences between the definition of "modification" (uncontrolled emissions) and the exemption (emissions) language, along with the lack of a requirement for a trial burn demonstration in certain cases, allow the possibility that a source making a change to an alternative fuel will be subject to minor NSR program without being aware of it. There is no de minimus guarantee for this exemption like there is with exemptions under subsections B through D of the exemptions section, so the exemption depends entirely upon a fuel switch not meeting the definition of "modification." Subdivision 2 of that exemption may restate the obvious, but interpretational issues and lack of a trial burn aside, the source is not exempt if the switch meets the definition of modification (in this case). The addition of subdivision 2 is important in making it clear that the lack of a trial burn does not protect a source from being subject to minor NSR program requirements. No change is made to the proposal in response to this comment.

32. **SUBJECT:** Treatment of fugitives in a significant emission rate determination

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the addition of new language that clarifies that new sources and projects for which all of the emissions considered in calculating the uncontrolled emission rate are fugitive emissions are exempt from minor NSR. (9VAC5-80-1105 C 3 for new sources; 9VAC5-80-1105 D 3 for projects).

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

33. **SUBJECT:** Significant emission rate for fine particulate matter (PM_{2.5})

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The exempt uncontrolled emission rate for PM_{2.5} for projects is proposed to be 5 tons per year (tpy). This is less than the 6 tpy rate set in the drafts of the regulation agreed upon by the regulatory advisory group established in 2006 to advise the agency in the development of these regulations. The department has provided no explanation for the decrease from 6 to 5 tpy. The exemption emission

rate of 10 tpy for PM_{2.5}, established for new sources (in 9VAC5-80-1105 C 1), is 40 percent of the of the 25 tpy exemption emission rate for total PM. A 6 tpy rate for PM_{2.5} for projects would likewise be 40 percent of the exemption emission rate of 15 tpy that is proposed for total PM (for projects). Accordingly, the exempt uncontrolled emission rate for PM_{2.5} for projects in 9VAC5-80-1105 D 1 should be established at the 6 tpy rate set during the advisory group discussions.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

34. **SUBJECT:** Definition of "construction."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The term "demolition" should not be included in the definition of construction (9VAC5-80-1110 C). Demolition is a one-time process and the resultant emissions are not permanent. In addition, the definition should address an "increase" in the uncontrolled emission rate rather than a "change". Dominion suggests the proposed definition be modified to read as follows:

"Construction" means fabrication, erection, installation, ~~demolition~~, relocation, addition, replacement or modification of an emissions unit that would result in ~~a change~~ an increase in the uncontrolled emission rate of the unit.

VMA is not sure why the phrase "that would result in a change in the uncontrolled emissions rate" has been added and would prefer to have critical definitions in both minor and major NSR as consistent as possible. However, to the extent the department feels is it necessary or useful to embellish this definition, it should be revised to read as suggested by Dominion. Substitution of the word "increase" for "change" is particularly important, since "demolition" is proposed to be included in the definition of "construction." Historically, demolition has not routinely been considered to be construction. If demolition will now be routinely considered to be construction, "change" should be replaced with "increase."

RESPONSE: The addition of the terms "demolition," "installation," and "modification, and the addition of the phrase referring to a "change" in emissions were all intended to improve the consistency of the definition of "construction" between the NSR programs. Making the changes recommended in this comment would fundamentally affect the concept of commencing construction and the definition of "begin actual construction" to the detriment of NSR program consistency. No change is made to the proposal in response to this comment.

35. **SUBJECT:** Definition of "emission unit."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The proposed definition of an "emissions unit" (9VAC5-80-1110 C) to mean "any part of a stationary source which emits or has the potential to emit any regulated air pollutant" (emphasis added) is very broad in scope. The regulatory advisory group spent considerable time discussing the need for clarification of the meaning of the term "emissions unit." Units that are operationally linked but perform functionally different operations and could operate independently should not be aggregated into one "emissions unit." The definition of "emissions unit" for purposes of 9VAC5-80, should be revised to make it clear that the term is intended to apply to the smallest discreet piece of emitting equipment and not to broad aggregations of operationally linked but functionally independent units. For example, a coating mixer and a coating applicator are operationally linked because the mixer mixes the coatings in proper proportions for use by the coating applicator. While these two units are operationally linked, they perform functionally different operations and could operate independently. They should not be aggregated into one "emissions unit." The advisory group's recommendation to include such clarification should have been incorporated.

RESPONSE: At the end of the advisory group's meetings there was a general consensus that the definition should be changed, but because there was no consensus on how to change the definition, the recommendation of the advisory group was to make no change. No change is made to the proposal in response to this comment.

36. **SUBJECT:** Definition of "major modification."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: For clarification, we recommend that the qualification "For purposes of this article" be inserted at the beginning of this definition (9VAC5-80-1110 C) in order to ensure that this definition, which differs from the definition of "major modification" elsewhere in Virginia's air regulations, applies only to the minor NSR regulations in Article 6.

RESPONSE: This particular definition of "major modification" cannot apply to another regulation unless specifically referenced by the other regulation. Likewise, the definitions of "major modification" specific to other individual articles in 9VAC5-80 cannot apply to Article 6 unless specifically referenced. Note that 9VAC5-80-1100 is introduced by paragraph A, which states, "For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution . . ." (Emphasis added.) No change has been made to the proposal as a result of this comment.

37. **SUBJECT**: Definition of "modification."

COMMENTER: Dominion Resources Services, Inc.

TEXT: The proposed definition (9VAC5-80-1110 C) includes a list of actions that will not be considered as physical changes or change in the method of operation, including "Use of an alternative fuel or raw material that the emission unit is approved to use under any new source review permit" (see subdivision 5). First, to the extent that use of an alternative fuel is a previously approved activity for an emission unit, the need for such activity to be deemed "not considered as a physical change or change in method of operation" by way of this definition is superfluous. Second, the inclusion of this language implies that the use of an alternative fuel (for temporary test burns, for example) would require to already have received approval. This is in direct conflict with the exemption provisions of 9VAC5-80-1105 A 1 e (1) and (2) for the use of alternative fuels. Subdivision 5 should be deleted.

RESPONSE: Changes to this definition are not just a reorganization of it's component parts. The original exclusions to the definition often reflect specific concerns raised over time by individuals that wanted confirmation that their changes are not modifications. This provision preserves one of those concerns. It may restate the obvious, but is clear and meaningful to some segment of the regulated public. No change has been made to the proposal as a result of this comment.

38. **SUBJECT**: Definition of "nonroad engine."

COMMENTER: Dominion Resources Services, Inc.

TEXT: The proposal strikes subdivision 3 from the definition of a "nonroad engine" (9VAC5-80-1110 C), which would eliminate the nonroad engine exemption for an engine that "by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another." Although these types of engines are also captured in the definition of "portable," they would only qualify for exemptions if they meet the exemption criteria for a portable emissions unit established in 9VAC5-80-1105 A 1 c, which includes the requirement that the portable unit is either subject to a minor NSR permit or a general permit. We are concerned that this would apply to equipment such as rental pumps, welding equipment or conveyor belts. Emissions from many engines servicing these types of equipment are already regulated by the federal government at the time these engines are manufactured and are temporary emissions at a facility. It is therefore not necessary to regulate these emissions in a minor source NSR program. We urge the department to either retain subdivision 3 of this definition or clarify in 9VAC5-80-1105 A 1 c that these emissions are exempt from minor source NSR.

RESPONSE: Non-emergency engines that are supply portable equipment should be subject to new source review if they are large enough such that their emissions exceed the exempt emission rates of 9VAC5-80-1105 C and D. No change has been made to the proposal as a result of this comment.

39. **SUBJECT:** Definition of "precursor pollutant."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The department needs to clarify that exempt uncontrolled emission rates and significance levels for sulfur dioxide (SO₂) and nitrogen oxides (NO_x) are 40 tpy, notwithstanding their status as precursors to PM_{2.5}. It must also clarify that in spite of their roles as precursors to PM_{2.5}, the direct emissions of SO₂ and NO_x are not included in determining whether the exempt uncontrolled emission rates and significance levels of PM_{2.5} are triggered.

It appears something is missing in this definition in subdivision (3), which should read: "Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations." The inclusion of "precursor pollutants" as "regulated pollutants" raises the question of whether this effectively reduces the exempt uncontrolled emission rates and the significance levels for SO₂ and NO_x. For example, the exempt uncontrolled emission rate for SO₂ in proposed 9VAC5-80-1105 C is 40 tpy, but the PM_{2.5} exemption rate is 10 tpy. Since SO₂ is a precursor to PM_{2.5}, is the effective exemption rate for SO₂ now 10 tpy rather than 40 tpy? Similar issues arise with respect to the disparity between the significance levels for SO₂ and NO_x (40 tpy) and PM_{2.5} (10 tpy). The regulation should be amended to make it clear that the exempt uncontrolled emission rates and significance levels for SO₂ and NO_x are 40 tpy notwithstanding their status as precursors to PM_{2.5}.

RESPONSE: PM_{2.5} is a unique pollutant which has its own NAAQS and its own threshold and significance level. Just as NO_x and VOC do not have two different significance levels, one as precursor to ozone and one as an individual pollutant, SO₂ and NO_x would not have a different significance level as a precursor to PM_{2.5}. Therefore, the language as written is appropriate. No change has been made to the proposal as a result of this comment.

40. **SUBJECT:** Definition of "significant" for volatile organic compounds (VOCs).

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: Subdivision a of the proposed definition of "significant" (9VAC5-80-1110 C)

sets the significance level for VOCs at 25 tpy statewide. Currently, the VOC significance level is 40 tons per year everywhere in the Commonwealth except the Northern Virginia ozone nonattainment area by virtue of its former serious ozone nonattainment classification relative to the 1-hour ozone standard. Unless the department can provide justification for this change, the significance level for VOC should be restored to 40 tpy, except for ozone nonattainment areas classified as serious and above.

RESPONSE: The definition of significant is important for determining if a change is a "major modification." In the minor NSR program, this has meaning within the context of public participation. Currently public participation is required for major modifications using the significance levels in the major new source review programs. A 40 ton per year threshold is more consistent with the significant emissions increase currently used to determine if a modification is a major modification, but it is not conservative enough to reflect significance of minor NSR "major modifications" in some nonattainment areas. This difference can be provided for, however, and so a 40 ton per year threshold for all other areas can be restored. This comment is appropriate and changes have been made to reflect the intent of this comment.

41. **SUBJECT:** Definition of "significant" for an unlisted regulated pollutant.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the proposed new subdivision b of the definition of "significant" (9VAC5-80-1110 C) that states that, "In reference to an emissions increase for a regulated air pollutant not listed in subdivision a of this definition, there is no emissions rate that shall be considered significant." The addition of this new provision would exempt the emission increases for a regulated air pollutant for which a minor source significant emission rate has not been established, and would alleviate the requirement for a project that resulted in any emission increase, no matter how miniscule, and the requirement for every new source to undergo minor NSR for a regulated pollutant, in the absence of an established significant emission rate for that pollutant. We believe this provision is crucial now that greenhouse gas emissions are considered regulated pollutants under the Clean Air Act.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

42. **SUBJECT:** Definition of "synthetic minor."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The definition of "synthetic minor" (9VAC5-80-1110 C) as proposed could be

read to imply that only sources that have "taken restrictions" through a permit would qualify for status as a synthetic minor. There may be instances in which applicable, federally enforceable restrictions, such as NSPSs or maximum achievable control technology standards, might operate to limit the potential to emit to minor status for certain sources. In this case it would not be appropriate to say the source "has taken" the restriction (for example, by permit). We suggest the phrase "is subject to one or more restrictions" replace "has taken a restriction" in this definition.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

43. **SUBJECT:** Definition of "temporary facility."

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA supports new provisions in the minor NSR regulations to handle temporary facilities, e.g., process pilot projects.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

44. **SUBJECT:** Definition of "toxic pollutant."

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: We could not find 9 VAC 5-60-92.B cited in this definition.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

45. **SUBJECT:** General provisions.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: We support insertion of the phrase "Except as provided in 9VAC5-80-1105 A 2 b" at the beginning of 9VAC5-80-1120 C to clarify that the exemption for reduction in stack height for sources that have previously been determined to be exempt from the minor NSR program (provided in 9VAC5-80-1105 A 2 b) is preserved.

The term "net emissions increase" in 9VAC5-80-1120 G should read, "increases in uncontrolled emission rates," since term "net emissions increase" in 9VAC5-80-1110 C is being eliminated.

RESPONSE: This comment is appropriate and changes have been made to reflect

the intent of this comment.

46. **SUBJECT**: Action on permit application.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: 9VAC5-80-1160 A provides that a source owner may request a "nonbinding applicability determination" from the department and specifies that the department must respond to the applicant within 30 days of the request. We take no particular issue with the inclusion of this new language, to the extent that it does not infer a new requirement that a source owner must request a nonapplicability determination in order to rely on its own independent determination that a project is exempt. The provision requires a timely (30-day) response on the part of the department, which could be helpful to the applicant if significant issues are identified up front by the department.

It has been established EPA and Virginia policy since the inception of the federal and state air permitting programs that it is the source owner's obligation in the first instance to determine whether a particular new source or change to an existing source requires a permit. There has never been, nor should there ever be, a requirement that a source owner ask the department (or EPA) for a nonapplicability determination prior to undertaking a project that the source owner has determined, on a sound basis, to be exempt from an air permitting requirement. On the other hand, this provision's reference to the (non)applicability determination by the department as "nonbinding" indicates that a source owner must be very wary of relying on such a determination. If a nonapplicability determination is nonbinding, how can a source owner be sure that the department (or EPA) won't subsequently repudiate it and take enforcement action against an owner who relies on it to proceed with construction or modification without a permit? In short, a source owner with the department's nonbinding nonapplicability determination proceeds at the owner's peril just as the owner would if he proceeded without it.

RESPONSE: There is no requirement for an owner to request this nonbinding applicability determination. The proposed language makes that clear with the use of the permissive verb "may." No change is made to the proposal in response to this comment.

47. **SUBJECT**: Action on permit application.

COMMENTER: Mirant Potomac River Generating LLC

TEXT: Mirant is suggesting a simple, commonsense addition that would streamline and expedite the permitting process for projects that reduce emissions. This is needed to counteract recent developments at the federal level that have eliminated

alternatives to permitting for such activities, unnecessarily delaying projects that will reduce emissions. For example, the United States Court of Appeals for the District Court of Columbia vacated the pollution control project exemption (see *State of New York v. EPA*, 413 F.3d 3, 40-42, D.C. Cir. 2005). More recently, EPA Region II has announced that the concept of "project netting" specifically provided for at 40 CFR 52.21(a) is no longer authorized. (Letter from Barbara A. Finnazzo, Director of Environmental Planning and Protection, EPA Region II to Kathleen Antoine, Environmental Director, HOVENSA, LLC; interpreting the phrase "sum of the differences" to mean "increases only.") Virginia's current proposal would allow a prospective applicant to request a "nonbinding" nonapplicability determination (9VAC5-80-1160 A); however, given the severe consequences of EPA's NSR enforcement initiative, prospective applicants are unlikely to rely on any determination that is "nonbinding."

To provide adequate certainty for applicants seeking to reduce emissions without the delay of the minor NSR permitting process, Mirant suggests adding language offering prospective applicants the option of requesting a "No Emissions Increase Permit," which would be issued by the department upon a determination that post-project emissions would not exceed past allowable emissions for any pollutant. This permit would cap emissions on a unit-by-unit basis at those past allowable emissions. The language would be added as 9VAC5-80-1160 H as follows:

H. In the alternative, an applicant may submit a permit application for a "No Emission Increase Permit" (NEIP) documenting past allowable emissions and projected future actual emissions. Upon a demonstration that the projected future actual emissions will not exceed past allowable emissions on a pollutant-by-pollutant, unit-by-unit basis, the department shall issue a NEIP limiting emissions for each pollutant from each unit referenced in the NEIP application to the specified past allowable emissions levels.

In effect, this would allow improvements to be made in the emissions rates of one or more pollutants without having to address permitting of pollutants that are unaffected, in the sense of causation, by the improvements. For example, in the case of a plant that seeks to install low NO_x burners, it is unnecessary to require submission of a minor NSR permit application or processing of the application regarding SO₂ since the emissions of SO₂ are not affected (i.e., no increase in SO₂ emissions is caused) by the low NO_x burners. We note that the proposed regulations already state that to the extent the proposed regulations are inconsistent with federal regulations the latter govern, so there is no potential for conflict with federal law.

RESPONSE: A nonbinding applicability determination should be sufficient to provide certainty to sources unsure of their applicability status. No change is made to the proposal in response to this comment.

48. **SUBJECT**: Public participation.

COMMENTER: Dominion Resources Services, Inc.

TEXT: In 9VAC5-80-1170 D 3, the department needs to clarify that the 100 tpy threshold, applied to a project that results in an increase in the potential to emit of any regulated pollutant that would equal or exceed that threshold, and triggering the requirement for a 30-day comment period, does not apply to greenhouse gases until a significant emission rate has been established for greenhouse gases and the department has developed and solicited for public review and comment an appropriate threshold level for greenhouse gases that is commensurate with a yet-to-be determined significant emission rate. Subjecting projects that result in an increase in the potential to emit greenhouse gases as low as 100 tpy to a 30-day comment period would overwhelm department resources and cause extensive permitting delays.

RESPONSE: We agree that a 100 tpy threshold is inappropriate for greenhouse gases, and plan to address this issue in a future action. No change has been made to the proposal as a result of this comment.

49. **SUBJECT**: Public participation.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: Under 9VAC5-80-1290 C, if a significant permit amendment must undergo the public notice, comment and hearing process specified in 9VAC5-80-1170 D and E, the public participation process should be limited exclusively to the subject of the significant permit amendment. The remainder of the permit is not open for public comment. 9VAC5-80-1290 C should state this limitation on public participation for a significant permit amendment.

RESPONSE: 9VAC5-80-1290 C specifies that the provisions of 1170 D and E apply to the requested change, with the intention that the entire permit is not automatically opened for review and comment. However, if other conditions are affected by the requested change, such as recordkeeping provisions for a requested change in monitoring, those modified provisions might also be subject to comment. There is no language that would make these finer points clear without unnecessarily restricting either the public or the department. The department will implement this provision to ensure that the permit is not opened for comment inappropriately. No change is made to the proposal in response to this comment.

50. **SUBJECT**: Minor permit amendments

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The proposed addition of subdivision 1 to 9VAC5-80-1280 C would narrow the ability to rescind a permit condition when the underlying legal basis for that condition no longer applies only if such condition does not "cover" a regulated air pollutant. If a permit term is obsolete or unnecessary because of an underlying change in the law, the permit condition should no longer be legally enforceable and should be removed from the permit regardless of whether the condition involves a regulated pollutant or other matter.

This provision is confusing and in its widest application will virtually eliminate the usefulness of this rescission provision. What does it mean for a permit condition to "cover" a regulated pollutant? Obviously, a permit condition setting an emission limit would "cover" a regulated pollutant. Take the classic example of the delisting of acetone as a VOC. This proposed new qualification in 9VAC5-80-1280 C (1) would appear to preclude the elimination of a permit term setting a VOC emission limit even though, prior to the delisting of acetone, acetone was the only VOC emitted. That's because, as stated in subdivision C (1), the permit condition "covers a regulated air pollutant," VOC. If a permit term is obsolete or unnecessary because of an underlying change in the law, the permit condition should be expunged from the permit no matter what.

This proposed revision should be deleted.

RESPONSE: A previous revision to the minor new source review program was withdrawn for the lack of this important provision. The cited example would be an example of how the new provision works. Acetone would no longer be a VOC and would no longer be a regulated pollutant. Under subdivision 2, the VOC emissions would drop to zero and there would not longer be any regulated pollutants emitted under this hypothetical one-pollutant permit. Under that scenario, all of the applicable terms of the permit could be rescinded. This provision is critical to protecting the program, and is sufficient to allow rescission of permit terms and conditions as intended. No change is made to the proposal in response to this comment.

**COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD
SUMMARY AND ANALYSIS OF PUBLIC TESTIMONY FOR
REGULATION REVISION H05
CONCERNING**

**MINOR NEW SOURCE REVIEW
(9VAC5 CHAPTER 80)**

INTRODUCTION

At the December 2009 meeting, the board authorized the department to promulgate for public comment a proposed regulation revision concerning minor new source review (NSR).

A public hearing was advertised accordingly and held in Richmond on April 14, 2010 and the public comment period closed on May 3, 2010. The proposed regulation amendments subject to the hearing are summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering minor new source review. A summary of the amendments follows:

1. The program is being changed to convert from a permit applicability approach for modifications which looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units to an approach that only looks at emissions increases from the affected emissions units that make up the project. Currently applicability is based on the net emissions increase based on all the source-wide emissions changes due to or directly resultant from the physical or operational changes. The proposed program will base permit applicability on the emissions from only those emissions units that are new or that undergo a physical or operational change at a project. Debottlenecked emissions (collateral emissions increases and decreases from unchanged processes and equipment) and all emissions decreases from affected emissions units will no longer be considered in determining permit applicability.
2. The program is being changed such that Best Available Control Technology (BACT) determinations will be required for all emissions units that are subject to the minor new source review program. The requirement for a BACT determination will be applied to each pollutant emitted by the new source or project in amounts equal to or greater than

the exempt emission rate threshold; however, permit terms and conditions may be applied to any pollutant from the affected emissions units as may be necessary to support the BACT determination. Restrictions on the proportion of the potential emissions reductions that may be considered for a BACT cost-benefit analysis will be removed. The current minimum net emissions increase applicability thresholds for individual affected emissions units will also be eliminated.

3. In order to implement the program changes identified in items 1 and 2, the program is being changed to add definitions and other provisions that will facilitate the clear and consistent identification of the emissions units subject to the permit program (i.e., affected units). For a "new stationary source," the affected emissions units will be all emissions units located to an undeveloped site. For a "project" at an existing stationary source, the affected emissions units will be all new or added emissions units and all modified emissions units that make up the project.

4. The program is being changed such that reconstruction of an emissions unit by the replacement of some of its components will no longer be treated differently from the modification of an emissions unit. Such changes will no longer be exempt if the potential to emit is not increased, but instead will only be exempt if the increase in the emissions rate is less than the exempt emission rates for a modified stationary source, just like any other modified emissions unit. Reconstruction of an emissions unit by replacing the entire emissions unit will continue to be exempt as a "replacement of an emissions unit" as long as the potential to emit does not increase as a result of that replacement. Reconstruction will only exist in the minor new source review program as it pertains to its applicability under the federal new source performance standards in 40 CFR Part 60.

5. The program is being changed such that certain transportable engines will no longer be considered as nonroad engines that are excluded from the definition of a stationary source. Emissions from such engines may now be subject to the provisions of the minor new source review program and subject to emissions control requirements.

6. The exemption for certain sized fuel burning equipment is being changed to (i) expand the exemption to include space heaters, (ii) reduce the maximum exemption size for natural gas-fired fuel burning equipment, and (iii) in ozone nonattainment and maintenance areas, aggregate similar types of fuel burning equipment that are included in a single project for the purpose of comparison with the exempt size criteria.

7. Exemptions are being added for (i) vegetative waste recycling/mulching operations, (ii) open pit incinerators subject to the open burning rule, and (iii) certain process testing and remediation projects that remain in existence for less than a year.

8. The program is being changed to remove the prohibition against exempting NSPS facilities.

9. Provisions are being added to provide for processing and issuing informational permit applicability determinations.

10. Provisions are being added to incorporate the federal requirements for the new PM_{2.5} air quality standard.

11. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program are being restructured to increase clarity.

12. Provisions are being added to allow terms and conditions of permits to be combined.

13. A number of other provisions have been rewritten to increase clarity, including: clarifying when to include fugitive emissions in determining permit applicability, how changes in stack height are subject to permit review requirements, how regulatory changes affect new and previous permit applications, which modifications are subject to public participation requirements, and how to make permit changes to accommodate exempt equipment replacements.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

A public hearing was held in Richmond, Virginia on April 14, 2010. One person attended the hearing without offering testimony, and three additional sets of written comments were received during the public comment period. As required by law, notice of this hearing was given to the public on or about February 1, 2010 in the Virginia Register and in seven major newspapers (one in each Air Quality Control Region) throughout the Commonwealth. In addition, personal notice of this hearing and the opportunity to comment was given by mail to those persons on the department's list to receive notices of proposed regulation revisions. A list of hearing attendees and the complete text or an account of each person's testimony is included in the hearing report which is on file at the department.

ANALYSIS OF TESTIMONY

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the regulation.

1. **SUBJECT**: General support for the proposal.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We commend the department for its effort to streamline the Virginia minor NSR program requirements.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

2. **SUBJECT**: General support for the proposal.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA strongly supports revising Virginia's minor NSR regulations as proposed because it will greatly simplify the determination of whether a physical or operational change at a source triggers the minor NSR permitting requirements. This will streamline the permitting process and cut down on the delay and costs Virginia's businesses incur under the current minor NSR rules. This streamlining is not expected to have any significant effect on the level of statewide emissions. See the Department of Planning and Budget's Economic Impact Analysis, which states that "the effect of proposed changes on the statewide emissions and consequently on air quality is not expected to be significant." VMA's analysis leads to the same conclusion. We believe the air emissions impacts from switching from the source-wide applicability approach back to the individual-unit applicability approach will be a wash because some source changes that would not trigger minor NSR under the source-wide approach may trigger permitting requirements under the individual-unit approach and vice-versa. Thus, the greater regulatory certainty and reduced administrative burdens and costs of the newly revised minor NSR rules can be realized without jeopardy to air quality in the Commonwealth.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

3. **SUBJECT**: Best Available Control Technology (BACT) applicability for pollutants.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The regulations in 9VAC5-50-260 B and 9VAC5-50-260 D include new language authorizing the department to impose permit limits at its discretion on any air pollutant on the premise that such a limit is necessary in order to implement BACT for "for any regulated pollutant that may be emitted from any affected emissions unit." [Emphasis added.] The intent of this addition is not clear. BACT requirements should be focused on a pollutant-by-pollutant basis for affected

emissions units for which an emissions increase from that unit triggers minor NSR. To the extent that the addition of this new language is intended to allow the department to deviate from this approach for BACT, we oppose the language and suggest it be eliminated. Such a stringent and all-encompassing approach is overreaching and costly. It does not make sense to require costly emissions controls at units that are not undergoing a physical or operational change. Moreover, applying BACT to all projects could have the effect of deterring certain pollution control projects that are compromised by secondary equipment that would otherwise not be required to consider BACT.

RESPONSE: The implementation of BACT under 9VAC5-50-240 and 9VAC5-50-260 usually results in a new predicted emissions rate for one or more regulated pollutants emitted from a process or emissions unit. The predicted emissions rate of the primary pollutant of interest is usually reduced, but there are often collateral increases or decreases in other regulated pollutants associated with that change. These collateral increases and decreases represent new predicted emission rates associated with the proper operation of the process and any BACT imposed on that process. Failure to set (or change) enforceable emissions limits on those collateral pollutant increases or decreases represents a failure to properly characterize and enforce BACT. The department has historically set enforceable permit limits on all such regulated pollutants. This proposed language accurately represents the existing permitting process for Minor NSR. This new language also does not imply that BACT is applied to any emissions unit other than "affected emissions units," which are only those that are new or otherwise physically or operationally changed. Pollution control projects are no longer implemented under provisions of the minor NSR program and 9VAC5-50-260. No change is made to the proposal in response to this comment.

4. **SUBJECT:** Incremental BACT.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA objects to the proposal to delete the last sentence in the definition of BACT (9 VAC 5-50-250). This sentence sets out important criteria governing how BACT is determined in minor NSR permitting, in contrast to major NSR permitting. Most particularly, VMA objects to the proposed elimination of "the cost effectiveness of the incremental emission reduction achieved." Incremental cost-effectiveness is an extremely useful determinant in setting appropriate BACT in minor NSR permitting. It makes no sense to require a source owner to install a much more costly emission control device as BACT if minimal additional emission reductions are achieved at an exorbitant additional cost. This provision has been a consideration in Virginia's BACT regulations for years and the purported rationale for this proposed change in the Agency Background Document for this rulemaking provides no compelling reason to delete this provision now. Thus, VMA believes the last sentence in the current BACT definition should be retained.

RESPONSE: The last sentence in the current definition of BACT contained some useful information concerning how BACT determinations may be accomplished for smaller sources that do not require the formal top-down analysis required for Prevention of Significant Deterioration (PSD) sources. Under the current Minor NSR definition of BACT and existing permitting procedures, a cost-benefit analysis is usually necessary only when there is no presumptive BACT or when a source believes that a presumptive BACT determination is inappropriate. DEQ supports determining BACT based upon an incremental cost-benefit analysis if a presumptive BACT determination is lacking or inappropriate, but the language in the existing definition is ambiguous and could be read to require such analysis or to impose BACT that results in few controlled emissions for relatively large new sources or BACT that results in unenforceable emissions limitations. Instead of deleting the last sentence, it has been revised to clarify the intended additional considerations. This comment is appropriate and changes have been made to reflect the intent of this comment.

5. **SUBJECT:** Incremental BACT.

COMMENTER: Dominion Resources Services, Inc.

TEXT: In addition, the department proposes to eliminate the ability to evaluate "the cost effectiveness" of the incremental emission reduction achieved in the BACT determination process (accomplished by removal of the last sentence in the current BACT definition in 9VAC5-50-250 C). We strongly oppose this change. Incremental "cost effectiveness" is a very useful and economically efficient determinant in setting appropriate BACT in minor NSR permitting. It makes no sense to require a source owner to install a much more costly emission control device as BACT if minimal additional emission reductions are achieved at an exorbitant additional cost. This provision has been a consideration in Virginia's BACT regulations since 2002 in order to allow consideration of additional factors when making BACT determinations for sources subject to minor NSR as opposed to major NSR PSD review, and the department has provided no compelling justification for this proposed change. Air quality in Virginia has been steadily improving. "On the books" and "on the way" emission reductions in a variety of federal and state programs for both stationary and mobile sources will provide additional air quality improvements in the Commonwealth. Requiring stringent and potentially costly emission controls for minor emissions increases from small sources with little or no consideration of the environmental significance of the emissions increases relative to the cost of emission controls is punitive and simply not warranted. We urge the department to retain the current definition of BACT that allows for evaluation of the cost-effectiveness of incremental emission reductions.

RESPONSE: See the response to comment 4. Deletion of the last sentence does not eliminate the ability to evaluate the cost effectiveness of incremental emission

reduction any more than the lack of such language in the same definition used for major new source review precludes such consideration. Nor does it mandate more costly emissions controls. The primary consideration for BACT under minor NSR will remain presumptive BACT for similar sources where one has been established and recent BACT for similar sources when there has been no presumptive BACT established by the board. When a cost-benefit analysis indicates that a presumptive BACT or a recent BACT is inappropriate, the remaining language allows the more appropriate BACT just as it did prior to 2002. However, instead of deleting the last sentence, it has been revised to clarify the intended additional considerations. This comment is appropriate and changes have been made to reflect the intent of this comment.

6. **SUBJECT**: BACT Applicability for individual emissions units.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: BACT should be applied only to the control of regulated air pollutants from affected emission units "for which there would be an uncontrolled emission rate equal to or greater than the [exemption] levels in 9VAC5-80-1105 C and D" (as applicable). The way 9VAC5-80-260 B and C are worded, BACT would apply to each and every "affected emissions unit" that is part of the new stationary source or "the project" if the uncontrolled emission rate of the new stationary source or project would exceed the applicable exemption level. VMA does not believe it makes any sense from an economic or environmental stand point to subject an emissions unit to a control technology requirement when emissions from that unit will not be substantial (in the case of new stationary source) or increase substantially (in the case of an emissions unit at an existing source). For example, requiring BACT at an affected emissions unit for an insubstantial 2 tpy increase in VOC emission from that unit makes little or no sense. The best gauge of "substantial" would be the exemption levels in 9VAC5-80-1105 C and D. This approach could be expressed by a simple wording changes such as: "An affected emissions unit shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emissions rate of the unit equal to or greater than the levels in 9VAC5-50-1105 D."

RESPONSE: It is inconsistent with the new source-wide applicability concept to exempt individual emissions units from a meaningful BACT determination, especially when the most conservative method of determining BACT, the cost-benefit analysis, would demonstrate that there are cost-effective methods of controlling emissions from one or more individual emissions units. The concept of BACT centers around the determination of what ways of reducing emissions are available that are both technologically feasible and economically reasonable. Artificially removing individual emissions units from consideration through an applicability determination (before a meaningful cost-benefit analysis is made) biases the cost-benefit analysis by discounting valid emissions reductions achievable through a technologically feasible

BACT. No change is made to the proposal in response to this comment.

7. **SUBJECT**: BACT and debottlenecked emission units.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of continuing to apply BACT only to the physically or operationally changed emissions units and not to debottlenecked emission units.

VMA has expressed support of the amendment to the BACT provisions in 9VAC5-50-260.C to clarify that BACT does not apply to emission units that themselves do not undergo a physical or operational change, e.g., "debottlenecked" emission units. This has been EPA's and Virginia's longstanding approach. (See current 9VAC5-50-260 C: "This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur . . . **as a result of physical change or change in the method of operation in the unit.**" [Emphasis added.]) This should remain Virginia's approach. It makes no sense from a cost-benefit standpoint to require the expenditure of money for emission controls at a unit that itself is not undergoing a physical or operational change. It only makes sense to couple the cost of emission controls to the cost of modifying the unit. Furthermore, from a legal perspective, it may be unlawful to impose an NSR permitting requirement on an existing piece of equipment that itself is not undergoing a change that would trigger NSR. Typically it takes a higher threshold than merely permitting a source modification, e.g., a NAAQS violation, to trigger a control requirement at an existing piece of unmodified equipment, e.g., the imposition of reasonably available control technology in a nonattainment area. In short, Virginia's regulations should be clear that BACT applies only at a unit that itself undergoes a physical or operational change resulting in a nonexempt emissions increase from that unit.

VMA also strongly supports the regulatory changes necessary to make it clear that BACT is required only at "affected emissions units," not upstream or downstream "debottlenecked" units that are not modified. It has been longstanding EPA and department policy that BACT is applied only to existing emission units that themselves undergo a modification. See, for example, EPA's New Source Review Workshop Manual, Draft 1990, Section B.II, BACT Applicability ("The BACT requirement applies to each individual new or modified affected emissions unit").

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

8. **SUBJECT**: BACT and uncontrolled emission rates.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to apply permit emissions limits representing BACT to any regulated pollutant emitted by any emissions unit at a new stationary source when the uncontrolled emissions rate of that pollutant from the source is greater than the exempt emission rate threshold. . . . The costs and benefits of the proposal to apply permit emissions limits representing BACT to any regulated pollutant emitted by any new or changed emissions unit in a project when the uncontrolled emissions rate increase of that pollutant from the project is greater than the exempt emission rate threshold.

VMA believes it makes no sense to apply BACT to new or modified emission units that would have uncontrolled emission rates below the relevant exemption rate thresholds. Take, for instance, the example of a project at an existing source where four emission units are modified resulting in a total 12 ton increase in the uncontrolled emission rate of VOC at the source. This source-wide increase is above the 10 tpy VOC exemption threshold rate in proposed 9VAC5-80-1105 D 1 so that this project would not be exempt from minor NSR review. However, suppose each of the four emission units (affected emission units) at the source would experience at most a 3 ton/year increase in VOC uncontrolled emission rate. It doesn't make sense to impose BACT on each of these small emission increases. It would not be cost effective.

RESPONSE: See the response to comment 6. No change is made to the proposal in response to this comment.

9. **SUBJECT**: BACT applicability for pollutants.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to apply such permit emissions limits to other pollutants emitted by new or changed emissions units that may not exceed the exempt emission rate threshold as may be necessary to implement a BACT determination.

VMA objects to this vague language proposed in 9VAC5-50-260 B and C

authorizing the department to impose permit limits at its discretion on any pollutant on the premise that such a limit is "necessary to implement" BACT for any other regulated pollutant. Once again to be clear, BACT should apply only to those regulated pollutants, on a pollutant-by-pollutant basis, emitted from any new affected emissions unit where the uncontrolled emission rate of the pollutant from that unit exceeds the exemption rate threshold for that pollutant specified in 9VAC5-80-1105 C 1 or from any modified affected emission unit where the increase in the uncontrolled emission rate of that pollutant from that unit exceeds the exemption rate threshold for that pollutant specified in 9VAC5-1105 D 1. There is too much opportunity to "back door" the BACT requirement to small emissions changes at units using this vague "necessary to implement" language. VMA's members advocate certainty in these revised regulations and we cannot discern any guiding principles for the implementation of this discretionary authorization for the department to impose BACT where clear applicability criteria are otherwise lacking. This language is totally unacceptable and should be deleted from 9VAC5-50-260 B and C.

RESPONSE: See the response to comment 3. No change is made to the proposal in response to this comment.

10. **SUBJECT:** Individual unit applicability approach to permit applicability.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The department proposed to convert from the source-based applicability approach of the current program back to an individual unit-based applicability approach in order to simplify the determination of whether a physical or operational change at a source triggers minor NSR permitting requirements. While we fully support efforts to simplify and streamline the permitting process, and agree that the rule should be amended to incorporate the individual unit approach, we believe the regulations should retain a netting option as an option. This would allow a permit applicant the opportunity to net out while providing the department with assured continued protection of air quality since the reductions achieved through netting would be enforceable measures.

RESPONSE: Netting is a process of using federally enforceable emission reductions to offset proposed emissions increases, as a way of bypassing more stringent new source review program requirements. This works well for the major new source review programs because the emission reductions may be made federally enforceable through the minor NSR program, which has less stringent review, emission control, and public participation requirements. There is no acceptable alternative new source review program other than Minor NSR through which netted emission reductions may be made federally enforceable, so there is no way to make netting work under minor new source review. This incompatibility was the primary reason that this amendment was necessary. No change is made to the

proposal in response to this comment.

11. **SUBJECT**: Permit applicability and designation of affected facility.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the clarification provided in 9VAC5-50-240.C that the provisions of this article do not apply to pollutants regulated under 9VAC5-60 (Hazardous Air Pollutant Sources).

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

12. **SUBJECT**: BACT applicability for new sources or projects.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The department needs to make clear that BACT is only required at "an affected emission unit" for which there would be an uncontrolled emission rate for a regulated pollutant equal to or greater than the exemption levels in 9VAC5-80-1105 C (for new sources) and D (for modifications or projects) for that pollutant. It should not be applied to upstream or downstream units that are not modified. As proposed, subsections 9VAC5-50-260.B and 9VAC5-50-260.C could be interpreted to require the application of BACT to each and every "affected emissions unit" that is part of the new stationary source or "the project" if the uncontrolled emission rate of the new stationary source or project would exceed the applicable exemption level. It has been longstanding U.S. Environmental Protection Agency (EPA) and department policy that BACT is applied only to new emission units and existing emission units that themselves undergo a modification.

We suggest the following changes to the proposed regulatory text of this section to clarify this concept:

9VAC5-50-260 B: A new ~~stationary source~~ affected emissions unit shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emissions rate of the unit equal to or greater than the levels in 9VAC5-50-1105 C.

9VAC5-50-260 C: ~~A project~~ An affected emissions unit shall apply best available control technology for each regulated pollutant for which there would be an increase in the uncontrolled emissions rate of the unit equal to or greater than the levels in 9VAC5-50-1105 D.

RESPONSE: 9VAC5-50-260 A states the central requirement in this section, which is that no owner shall allow their "affected facility" to emit pollutants in excess of the

BACT emissions limitation. This concept of requiring BACT for the "affected facility" (which is defined in 9VAC5-10-20 C, and may include one or more emissions units) is an existing requirement and has not been changed. Clarification of subsection B is unnecessary because all emissions units at a new stationary source are "affected emissions units". The Department's proposed change to subsection C explicitly states that the "requirement applies to each affected emissions unit in the project" so clarification in this subsection is also unnecessary. No change is made to the proposal in response to this comment.

13. **SUBJECT**: Treatment of fugitive emissions in determining permit applicability.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The proposed amendments to 9VAC-5-80-1100 D would change how fugitive emissions are treated in determining minor NSR applicability. The approach in the current version of the regulations is that the addition of fugitive emissions to stack emissions that, by themselves, are below the minor NSR applicability thresholds will not be counted and cause a source or modification to trigger the minor NSR applicability thresholds. The department proposes to alter this longstanding approach of not including fugitive emissions to determine minor NSR applicability to an approach that minor NSR is triggered if fugitive emissions are added to stack emissions and that sum exceeds the minor NSR applicability thresholds. The department's rationale for the proposed change, "to avoid confusion about the meaning of this provision" is difficult to discern. We believe the meaning (that fugitive emissions are not counted if the inclusion of fugitives causes a stack emissions increase otherwise below the minor NSR threshold to exceed the threshold) is clear. There is no rationale for the change in approach that the department proposes. If the department believes this approach requires clarification, it should seek comment for clarification, not reverse it. Without adequate justification, 9VAC5-80-1100 D should remain as it has been – minor NSR is not triggered by the addition of fugitive emissions to otherwise exempt stack emissions.

RESPONSE: The proposed amendment to 9VAC-5-80-1100 D, taken together with the changes in 9VAC-5-80-1105 C 3 and D 3 do not change how fugitive emissions are treated in determining minor NSR applicability. The first sentence of the current requirement is unequivocal, "The fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article." The second sentence was less clear. Due to a misplaced word "only," it can be read either to exclude fugitives in the applicability determination every time fugitives make a difference, or to exclude fugitives only when they are the only emissions considered. The Department has interpreted the second sentence in the only non-trivial way possible, to the effect that fugitive emissions are included when determining applicability, unless they are the only emissions considered. It has been the longstanding approach of the department to include fugitive emissions in

the determination of Minor NSR applicability and not to exclude them, long before this language appeared in the regulation, but it may have been applied inconsistently in some cases because of this ambiguity. This amendment offers the best opportunity to correct and clarify this language, so that misinterpretation is unlikely in the future. No change is made to the proposal in response to this comment.

14. **SUBJECT**: Aggregation of contemporaneous increments.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The new subsection 9VAC5-80-1100 E adds the following language:

Where the construction of a new stationary source or a project is accomplished in contemporaneous increments that individually are not subject to approval under this article and that are not part of a program of construction of a new stationary source or project in planned incremental phases approved by the board, all such increments shall be added together for determining the applicability of any particular change under the provisions of this article. An incremental change is contemporaneous with the particular change and the date that the emissions increase from the particular change occurs.

The rationale for adding this new language is unclear. To the extent the intent of this provision is to address circumvention, that issue is already addressed through the anti-circumvention clause in 9VAC5-20-70 (General Provisions). There is also an anti-circumvention provision in the existing Article 6 rules at 9VAC5-80-1100 F.

We are concerned that this new provision can be interpreted to require the automatic aggregation of any and all emission increases from physical and operational changes at a facility during a five-year period. Emission increases from facility changes that are part of a single project or that are technically or economically dependent upon one another (and thus truly not separate projects) should be aggregated for purposes of determining minor NSR applicability. In contrast, emission increases from facility changes that are not directly related or dependent upon one another should be treated as separate projects for purposes of determining minor NSR applicability. This has been the longstanding approach of EPA and the department, and to the extent that subsection E is intended to alter this approach and impose a blanket approach where the department would require the automatic aggregation of otherwise separate and distinct projects, it should be deleted.

RESPONSE: This language is not new and it represents the "longstanding approach" of the regulation concerning circumvention in time. It existed in the applicability section of the previous version of the minor NSR (9VAC5-80-10 A 4)

and was used primarily to aggregate incremental changes over time which should have been, but were not, approved by the board as phases of the same project, and which had thereby improperly avoided permitting altogether or had avoided a proper BACT analysis by dividing up incremental emissions increases. It does not duplicate the circumvention requirement of 9VAC5-80-1100F, which contains the other two legs of circumvention; circumvention by a pattern of ownership and by a pattern of development over a geographic area. This requirement applies specifically to a "new source" or "project" and so it does not aggregate unrelated projects. No change is made to the proposal in response to this comment.

15. **SUBJECT**: New source performance standards (NSPS) limit on exemptions.

COMMENTER: Dominion Resources Services, Inc.

TEXT: With respect to the provisions regarding federal NSPSs in current 9VAC5-80-1100 E, we support the proposed deletion. There is no reason to limit the exemption of affected facilities subject to federal NSPSs by virtue of 9VAC5-80-1100 E 1 and 2 in the current regulations. We agree that automatically forcing NSPS-affected sources to apply for and obtain a minor NSR permit is not an efficient use of the agency's limited staff resources.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

16. **SUBJECT**: Grandfathering provision.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the addition of 9VAC5-80-1100 J, which clarifies that the previous provisions of this article will remain applicable for all permits for which applications are deemed complete (under 9VAC5-80-1160.B) prior to the effective date of these proposed amendments (when finalized).

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

17. **SUBJECT**: Fugitive emissions in determining permit applicability.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: The proposed amendments to 9VAC5-80-1100 D and 9VAC5-80-1105 C 3 and D 3 would substantially change the approach toward counting fugitive emissions in determining minor NSR applicability. The approach in the current version of the regulations is that the addition of fugitive emissions to stack emissions that are below the minor NSR applicability thresholds will not take a source or modification

over the minor NSR applicability thresholds. The proposal alters this longstanding approach of not including fugitive emissions to determine minor NSR applicability to an approach that minor NSR is triggered if fugitive emissions are added to stack emissions and that sum exceeds the minor NSR applicability thresholds. The department says the changes it proposes to 9VAC5-80-1100 D are "necessary to avoid confusion about the meaning of this provision." This is no rationale for the radical change in approach that is proposed. Moreover, confusion would actually arise from any across-the-board requirement to quantify fugitive emissions for purposes of determining minor NSR applicability. Existing emission factors for fugitive emissions from most types of facilities are characterized by a high degree of uncertainty. Furthermore, technologically and economically feasible means for measuring most fugitive emissions simply do not exist. Consequently, estimated quantities of fugitive emissions are highly suspect, and in the vast majority of cases, applying new source review to fugitive emissions becomes an exercise that values form over substance. Without adequate justification, 9VAC5-80-1100 D should remain as it has been – minor NSR is not triggered by the addition of fugitive emissions to otherwise exempt stack emissions. These same issues also apply to the exemption provisions of 9VAC5-80-1105 C 3 and D 3.

RESPONSE: See the response to comment 13. No change is made to the proposal in response to this comment.

18. **SUBJECT:** Applicability, aggregation.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: To the extent that 9VAC5-80-1100 E amounts to a rule of automatic aggregation of any and all emission increases from physical or operational changes at a facility during a five year period, VMA strenuously objects. VMA's concern is generated in part from the following statement in the Agency Background Document for the rulemaking: "The department is specifically seeking comment concerning the adequacy of the proposed regulation to address separate requests for exempt changes that would be subject to the new source review program if considered together." VMA is not sure what the department means by "separate requests for exempt changes." However, VMA objects to the addition of subsection E in 9 VAC 5-80-1100.

Emission increases from facility changes that are part of a single project or that are technically or economically dependent upon one another (and thus truly not separate projects) should be aggregated for purposes of determining minor NSR applicability. In contrast, emission increases from facility changes that are not directly related or dependent upon one another should be treated as separate projects for purposes of determining minor NSR applicability. This has been the longstanding approach of EPA and the department, and to the extent that 9VAC5-80-1100 E is intended to alter this approach, it should be deleted. If the department

intends to apply 9VAC5-80-1100 E as an automatic aggregation provision, then it must notify the General Assembly that this provision is more restrictive than the applicable federal requirements.

RESPONSE: See the response to comment 14. No change is made to the proposal in response to this comment.

19. **SUBJECT:** New source performance standards (NSPS) limit on exemptions.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: With respect to the provisions in current 9VAC5-80-1100 E, VMA supports their deletion. There is no reason to limit the exemption of affected facilities subject to federal NSPSs as is the case by virtue of 9VAC5-80-1100 E 1 and 2 in the current regulations. VMA agrees that automatically forcing NSPS-affected sources to apply for and obtain a minor NSR permit is not an efficient use of the agency's limited staff resources.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

20. **SUBJECT:** Grandfathering provision.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA supports the certainty provided by 9VAC5-80-1100 J.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

21. **SUBJECT:** Aggregation of exempt equipment.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to aggregate the capacities of all similar equipment at a new source or a project that is now individually exempted by source type and size when considering whether or not that equipment should be exempt from permitting. . . . The costs and benefits of limiting the aggregation of the equipment capacities for this exemption to sensitive areas (such as non-attainment areas and maintenance areas) as opposed to allowing use of the exemption state-wide.

VMA believes each separate piece of emitting equipment should be considered individually in determining whether it is exempt from the minor NSR requirements. Further, the exemption should apply uniformly throughout the Commonwealth. There is no basis for distinguishing between attainment, nonattainment and maintenance areas in applying the size exemptions. The size exemptions are predicated on the notion that it makes no sense to subject smaller emission units to BACT and air permitting requirements. This rationale applies equally to all small pieces of equipment throughout the Commonwealth. Thus, there would be unjustifiable additional costs without demonstrable benefits if this exemption were denied to small pieces of equipment that happen to be located in nonattainment or maintenance areas.

RESPONSE: Historically, certain types of emissions units have been exempt on an emissions unit by emissions unit basis. As time progressed, it was recognized that if there were enough small emissions units constructed together that they could represent a significant increase in emissions and that, using efficiencies of co-location and type of emissions, they could together justify some additional emissions control. This was the basis for the emissions rate-based exemptions for facilities. The basis for considering additional emissions controls in sensitive areas is also well established both federally (as in the establishment of additional controls in nonattainment areas) and in state regulation (such as applying existing source standards for ozone only within VOC emission control areas). This provision does not imply that additional controls will be implemented upon the previously exempted types of equipment, only that they may be subjected to a cost-benefit analysis to determine if there are technologically feasible and economically reasonable controls that might result in beneficial emissions reductions in these sensitive areas. No change is made to the proposal in response to this comment.

22. **SUBJECT:** Aggregation.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The adequacy of the proposed regulation to address separate requests for exempt changes that would be subject to the new source review program if considered together.

VMA's members are strongly opposed to any such blanket approach whereby the department would automatically aggregate otherwise separate and distinct projects for purposes of triggering NSR requirements. We note that the department appears to have been implementing this approach on an ad hoc basis for some time, and VMA members have objected to this as unlawful and beyond the authority of the agency. The department has in some instances persisted with this illegal approach

nonetheless. VMA will seriously consider appropriate legal action should the department persist with this approach and try to legitimize it with this proposed regulatory amendment.

RESPONSE: See the response to comment 21. No change is made to the proposal in response to this comment.

23. **SUBJECT:** Debottlenecking.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: In the Agency Background Document for this rulemaking, the department requested public comment on several specific issues, including the following:

The costs and benefits of the proposal to discontinue the practice of considering emissions increases from debottlenecked emissions units when evaluating a project for minor NSR program permit applicability.

The switch from the source-wide net emissions increase approach to the unit-by-unit uncontrolled emissions approach dictates that emissions from emission units that themselves do not undergo a physical or operational change cannot be included in determining minor NSR applicability. There is no way to make this critical switch in applicability and at the same time add in emissions from "unaffected" units. Nor should emissions from debottlenecked units be included for purposes of determining minor NSR applicability. If such units are not subject to the BACT requirement (as has always been the case under EPA and Virginia regulations), it makes no sense to use debottlenecked emissions just to trigger minor NSR permitting and hence the BACT requirement for other units at the source that will undergo a physical or operational change. To simplify matters, simply take debottlenecked units out of the applicability equation.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

24. **SUBJECT:** Exemption for regulated pollutants for which a significant emission rate has not been established.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We strongly support the proposed new provision that would exempt the emission increases for a regulated air pollutant for which a minor source significant emission rate has not been established (9VAC5-80-1110 C, revised definition of "significant"). This would alleviate the requirement for a project that resulted in any emission increase, no matter how miniscule, and the requirement for every new source to undergo minor NSR for a regulated pollutant in the absence of an

established significant emission rate for that pollutant. We believe this provision is crucial now that greenhouse gas emissions are considered regulated pollutants under the Clean Air Act and would prevent a possible scenario where virtually every new source or project would require a preconstruction permit.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

25. **SUBJECT:** Permit exemption for portable emissions units.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The requirement in 9VAC5-80-1105 A 1 that emissions from a portable emissions unit must be secondary emissions (subdivision c (1) of this subsection) unnecessarily narrows the availability of this exemption and should be deleted. There may be instances where a portable emission unit may be needed to augment a source's routine production. Such a unit would not qualify as a temporary facility, would not meet the definition of "secondary emission" in 9VAC5-80-1110 C, and subsequently would not qualify for the proposed exemption.

The location of a portable emission unit at a site may be exempt if it meets certain conditions enumerated in 9VAC5-80-1105 A 1 c (1) through (6). The first of these is that "any new emissions from the portable unit are secondary emissions." This condition appears to virtually eliminate the portable unit exemption, since emissions from most portable units will never meet the definition of "secondary emissions" (emissions that "do not come from the stationary source itself"). Thus, 9VAC5-80-1105 A 1 c (1) should be deleted. Furthermore, subdivision (3), requiring emissions from portable units to be temporary, should also be deleted. The preceding subdivision (2) requires a portable emissions unit to be appropriately permitted, so there is no rational basis for requiring emissions to be temporary.

RESPONSE: The basis for the exemption for portable emissions units is that they are already permitted for a certain amount of emissions. Their special permit allows them to emit that much per year regardless of their location (within limits). If these sources alter their configuration or otherwise modify or construct new emissions units then they are subject to new source review requirements like every other source. This exemption is only for relocation, not for modification of the portable facility or construction of new emissions unit. Secondary emissions, however, are going to occur also. The act of relocation alone will produce secondary emissions. This clarifying language has been in place in guidance and as conditions of these portable facility permits for well over a decade, and do not interfere with relocation under this exemption. No change is made to the proposal in response to this comment.

26. **SUBJECT**: Permit exemption for replacement units.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: We support the new approach to replacement units proposed in 9VAC5-80-1105 A 2 to the extent that the term "removed" is interpreted to mean removed from service during normal operation of the replacement unit. However, the condition for a replaced emissions unit as proposed could be read to mean that the replaced unit must be physically removed from the source, which would be overly restrictive and unnecessary to assure compliance.

We also believe this approach should be applied to not only permanent replacements but also to temporary replacements. This would cover, for instance, the use of a temporary replacement boiler while a facility's regular boiler is undergoing repairs. However, to make this approach work, the regulations would have to accommodate a brief shakedown period when the temporarily replaced boiler would be operated at the same time as the replacement boiler.

In order to both clarify the intent of this replacement condition and accommodate temporary replacements, we suggest subsection A 2 a (5) be changed to read:

The replaced emissions unit is either removed from normal service during the period the replacement unit is operated or permanently shut down in accordance with the provisions of 9VAC5-20-220. Normal service does not include a limited shakedown period when both the temporarily replaced emissions unit and the replacement emissions unit may be operated simultaneously in order to facilitate the return of the replaced unit to normal service.

RESPONSE: Support for the proposal is appreciated. The term "removed" is not qualified in the regulatory language to mean "removed from service." Use of this exemption for temporary facilities was discussed during advisory group meetings and was discarded as not consistent with minor new source review. No change is made to the proposal in response to this comment.

27. **SUBJECT**: Permit exemption for stack height elevation reduction.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the exemption in 9VAC5-80-1105 A 2 b for projects involving a reduction in stack elevation outlet for stacks that serve facilities that have previously been determined to be exempt from the minor NSR program.

RESPONSE: Support for the proposal is appreciated. No change is made to the

proposal in response to this comment.

28. **SUBJECT**: Permit exemptions, reduction of exemption level for natural gas-fired fuel burning equipment.

COMMENTER: Dominion Resources Services, Inc.

TEXT: In 9VAC5-80-1105 B 1 a (4), the department proposes to change the exemption for natural gas-fired fuel burning equipment from 50,000,000 Btu/hr to 30,000,000 Btu/hr. However, no explanation has been provided for this reduction, which would expand the number of sources and projects that would be subject to minor source NSR. This proposed change should not be made without reasonable justification.

RESPONSE: When the proposal was being drafted, there was an NSPS that was applicable to 30,000,000 Btu/hr natural gas-fired fuel burning equipment. Those provisions no longer exist. This comment is appropriate and changes have been made to reflect the intent of this comment.

29. **SUBJECT**: Permit exemption requiring aggregation of emission thresholds in nonattainment areas.

COMMENTER: Dominion Resources Services, Inc.

TEXT: The addition of 9VAC5-80-1105 B 1 b requires the exemption levels for fuel burning equipment in 9VAC5-80-1105 B 1 a to be applied in the aggregate for each fuel type in ozone nonattainment and maintenance areas rather than on an individual basis. No justification for this requirement has been provided. To the extent the department believes additional measures may be needed to address local nonattainment issues, it can enforce such measures on a case-by-case basis and should not use a blanket approach in the context of minor NSR to do so. This provision should be eliminated.

RESPONSE: New source review permits are the tools for implementing additional measures to address the need for additional emissions controls for new or modified sources on a case-by-case basis. As time goes on, control technology gets better and cheaper. The need to investigate the cost effectiveness of such controls in sensitive areas, particularly where achieving attainment is difficult, is the justification for limiting this new source review permit program exemption in those areas. No change is made to the proposal in response to this comment.

30. **SUBJECT**: Permit exemption for temporary facilities.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: We support the addition of new provisions to exempt "temporary facilities" from minor NSR permitting (9VAC5-80-1105 B 13) and believe the proposed conditions under which this exemption would apply are generally reasonable. Under the federal prevention of significant deterioration (PSD) program, temporary emissions are ones which last for two years unless the Administrator determines that a longer period would be appropriate (45 FR 52728). Since the magnitude of emissions subject to minor NSR is less than the amount of emissions evaluated under PSD review, it seems reasonable that a minor NSR program could also define temporary emissions as those that last for no more than two years as well. Furthermore, this would provide added incentive for undertaking temporary projects such as test burns of alternative renewable fuels such as switchgrass or other non-fossil fuels. If a unit's uncontrolled emission rates would not exceed these exempt emission rates, the unit would be exempt anyway and wouldn't need to fit under the new temporary unit exemption. Accordingly, we request increasing the 12-month temporary emission exemption as proposed in 9VAC5-80-1105 B 13 a to two years.

RESPONSE: Averaging emissions over a year is the EPA-accepted basis for exemptions by emissions rate. The exemption was created with this in mind, so that it would be acceptable to EPA under existing NSR rules. These facilities would not be exempt under the existing Article 6 without the additional qualifications stated in that exemption. No change is made to the proposal in response to this comment.

31. **SUBJECT**: Permit exemption for alternative fuels or raw materials.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: 9VAC5-80-1105 A 1 e addresses a permit exemption for switches to alternative fuels or raw materials. Subdivision (1) of this subdivision reflects recent changes to the State Air Pollution Control Law by the General Assembly designed to make it easier for source owners to switch to alternative fuels and raw materials. However, subdivision (2) appears to eliminate the exemption by requiring that any such switch "not be subject to review under this article [6] as a project." ("Modification" is changed from the current wording to "project" in the proposed wording.) However, aren't all projects "subject to review" under the minor NSR regulations and thus ineligible for this exemption? In order to preserve the legislative intent of this exemption, subdivision (2) must be deleted.

VMA would also like to point out that any switch to an alternative fuel or raw material that does not increase the uncontrolled emission rate of any regulated pollutant is, by definition, not a "modification" and, therefore, does not trigger the requirement to obtain a minor NSR permit prior to the switch. Thus, VMA wonders about the general utility of the exemption in 9VAC5-80-1105 A 1 e which, by virtue of the first sentence in subdivision (1), requires a decrease in emissions (except for certain switches from residual oil to animal, fish or vegetable oil fuels). For example, if a

raw material switch would result in decreased emissions, it would inherently, by virtue of the definition of "modification," not require a minor NSR permit, and in such a case, the first sentence in 9VAC5-80-1105 A 1 e (1) would be meaningless but misleading.

RESPONSE: The exemption in 9VAC5-80-1105 A 1 e explicitly ensures that such alternative fuel switches, under certain conditions, will not meet the definition of modification and will not be subject to review under Article 6. The exemption is written to comply with statutory language. However, differences between the definition of "modification" (uncontrolled emissions) and the exemption (emissions) language, along with the lack of a requirement for a trial burn demonstration in certain cases, allow the possibility that a source making a change to an alternative fuel will be subject to minor NSR program without being aware of it. There is no de minimus guarantee for this exemption like there is with exemptions under subsections B through D of the exemptions section, so the exemption depends entirely upon a fuel switch not meeting the definition of "modification." Subdivision 2 of that exemption may restate the obvious, but interpretational issues and lack of a trial burn aside, the source is not exempt if the switch meets the definition of modification (in this case). The addition of subdivision 2 is important in making it clear that the lack of a trial burn does not protect a source from being subject to minor NSR program requirements. No change is made to the proposal in response to this comment.

32. **SUBJECT:** Treatment of fugitives in a significant emission rate determination

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the addition of new language that clarifies that new sources and projects for which all of the emissions considered in calculating the uncontrolled emission rate are fugitive emissions are exempt from minor NSR. (9VAC5-80-1105 C 3 for new sources; 9VAC5-80-1105 D 3 for projects).

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

33. **SUBJECT:** Significant emission rate for fine particulate matter (PM_{2.5})

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The exempt uncontrolled emission rate for PM_{2.5} for projects is proposed to be 5 tons per year (tpy). This is less than the 6 tpy rate set in the drafts of the regulation agreed upon by the regulatory advisory group established in 2006 to advise the agency in the development of these regulations. The department has provided no explanation for the decrease from 6 to 5 tpy. The exemption emission

rate of 10 tpy for PM_{2.5}, established for new sources (in 9VAC5-80-1105 C 1), is 40 percent of the of the 25 tpy exemption emission rate for total PM. A 6 tpy rate for PM_{2.5} for projects would likewise be 40 percent of the exemption emission rate of 15 tpy that is proposed for total PM (for projects). Accordingly, the exempt uncontrolled emission rate for PM_{2.5} for projects in 9VAC5-80-1105 D 1 should be established at the 6 tpy rate set during the advisory group discussions.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

34. **SUBJECT:** Definition of "construction."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The term "demolition" should not be included in the definition of construction (9VAC5-80-1110 C). Demolition is a one-time process and the resultant emissions are not permanent. In addition, the definition should address an "increase" in the uncontrolled emission rate rather than a "change". Dominion suggests the proposed definition be modified to read as follows:

"Construction" means fabrication, erection, installation, ~~demolition~~, relocation, addition, replacement or modification of an emissions unit that would result in ~~a change~~ an increase in the uncontrolled emission rate of the unit.

VMA is not sure why the phrase "that would result in a change in the uncontrolled emissions rate" has been added and would prefer to have critical definitions in both minor and major NSR as consistent as possible. However, to the extent the department feels is it necessary or useful to embellish this definition, it should be revised to read as suggested by Dominion. Substitution of the word "increase" for "change" is particularly important, since "demolition" is proposed to be included in the definition of "construction." Historically, demolition has not routinely been considered to be construction. If demolition will now be routinely considered to be construction, "change" should be replaced with "increase."

RESPONSE: The addition of the terms "demolition," "installation," and "modification, and the addition of the phrase referring to a "change" in emissions were all intended to improve the consistency of the definition of "construction" between the NSR programs. Making the changes recommended in this comment would fundamentally affect the concept of commencing construction and the definition of "begin actual construction" to the detriment of NSR program consistency. No change is made to the proposal in response to this comment.

35. **SUBJECT:** Definition of "emission unit."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The proposed definition of an "emissions unit" (9VAC5-80-1110 C) to mean "any part of a stationary source which emits or has the potential to emit any regulated air pollutant" (emphasis added) is very broad in scope. The regulatory advisory group spent considerable time discussing the need for clarification of the meaning of the term "emissions unit." Units that are operationally linked but perform functionally different operations and could operate independently should not be aggregated into one "emissions unit." The definition of "emissions unit" for purposes of 9VAC5-80, should be revised to make it clear that the term is intended to apply to the smallest discreet piece of emitting equipment and not to broad aggregations of operationally linked but functionally independent units. For example, a coating mixer and a coating applicator are operationally linked because the mixer mixes the coatings in proper proportions for use by the coating applicator. While these two units are operationally linked, they perform functionally different operations and could operate independently. They should not be aggregated into one "emissions unit." The advisory group's recommendation to include such clarification should have been incorporated.

RESPONSE: At the end of the advisory group's meetings there was a general consensus that the definition should be changed, but because there was no consensus on how to change the definition, the recommendation of the advisory group was to make no change. No change is made to the proposal in response to this comment.

36. **SUBJECT:** Definition of "major modification."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: For clarification, we recommend that the qualification "For purposes of this article" be inserted at the beginning of this definition (9VAC5-80-1110 C) in order to ensure that this definition, which differs from the definition of "major modification" elsewhere in Virginia's air regulations, applies only to the minor NSR regulations in Article 6.

RESPONSE: This particular definition of "major modification" cannot apply to another regulation unless specifically referenced by the other regulation. Likewise, the definitions of "major modification" specific to other individual articles in 9VAC5-80 cannot apply to Article 6 unless specifically referenced. Note that 9VAC5-80-1100 is introduced by paragraph A, which states, "For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution . . ." (Emphasis added.) No change has been made to the proposal as a result of this comment.

37. **SUBJECT**: Definition of "modification."

COMMENTER: Dominion Resources Services, Inc.

TEXT: The proposed definition (9VAC5-80-1110 C) includes a list of actions that will not be considered as physical changes or change in the method of operation, including "Use of an alternative fuel or raw material that the emission unit is approved to use under any new source review permit" (see subdivision 5). First, to the extent that use of an alternative fuel is a previously approved activity for an emission unit, the need for such activity to be deemed "not considered as a physical change or change in method of operation" by way of this definition is superfluous. Second, the inclusion of this language implies that the use of an alternative fuel (for temporary test burns, for example) would require to already have received approval. This is in direct conflict with the exemption provisions of 9VAC5-80-1105 A 1 e (1) and (2) for the use of alternative fuels. Subdivision 5 should be deleted.

RESPONSE: Changes to this definition are not just a reorganization of its component parts. The original exclusions to the definition often reflect specific concerns raised over time by individuals that wanted confirmation that their changes are not modifications. This provision preserves one of those concerns. It may restate the obvious, but is clear and meaningful to some segment of the regulated public. No change has been made to the proposal as a result of this comment.

38. **SUBJECT**: Definition of "nonroad engine."

COMMENTER: Dominion Resources Services, Inc.

TEXT: The proposal strikes subdivision 3 from the definition of a "nonroad engine" (9VAC5-80-1110 C), which would eliminate the nonroad engine exemption for an engine that "by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another." Although these types of engines are also captured in the definition of "portable," they would only qualify for exemptions if they meet the exemption criteria for a portable emissions unit established in 9VAC5-80-1105 A 1 c, which includes the requirement that the portable unit is either subject to a minor NSR permit or a general permit. We are concerned that this would apply to equipment such as rental pumps, welding equipment or conveyor belts. Emissions from many engines servicing these types of equipment are already regulated by the federal government at the time these engines are manufactured and are temporary emissions at a facility. It is therefore not necessary to regulate these emissions in a minor source NSR program. We urge the department to either retain subdivision 3 of this definition or clarify in 9VAC5-80-1105 A 1 c that these emissions are exempt from minor source NSR.

RESPONSE: Non-emergency engines that are supply portable equipment should be subject to new source review if they are large enough such that their emissions exceed the exempt emission rates of 9VAC5-80-1105 C and D. No change has been made to the proposal as a result of this comment.

39. **SUBJECT:** Definition of "precursor pollutant."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The department needs to clarify that exempt uncontrolled emission rates and significance levels for sulfur dioxide (SO₂) and nitrogen oxides (NO_x) are 40 tpy, notwithstanding their status as precursors to PM_{2.5}. It must also clarify that in spite of their roles as precursors to PM_{2.5}, the direct emissions of SO₂ and NO_x are not included in determining whether the exempt uncontrolled emission rates and significance levels of PM_{2.5} are triggered.

It appears something is missing in this definition in subdivision (3), which should read: "Nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas unless the board determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations." The inclusion of "precursor pollutants" as "regulated pollutants" raises the question of whether this effectively reduces the exempt uncontrolled emission rates and the significance levels for SO₂ and NO_x. For example, the exempt uncontrolled emission rate for SO₂ in proposed 9VAC5-80-1105 C is 40 tpy, but the PM_{2.5} exemption rate is 10 tpy. Since SO₂ is a precursor to PM_{2.5}, is the effective exemption rate for SO₂ now 10 tpy rather than 40 tpy? Similar issues arise with respect to the disparity between the significance levels for SO₂ and NO_x (40 tpy) and PM_{2.5} (10 tpy). The regulation should be amended to make it clear that the exempt uncontrolled emission rates and significance levels for SO₂ and NO_x are 40 tpy notwithstanding their status as precursors to PM_{2.5}.

RESPONSE: PM_{2.5} is a unique pollutant which has its own NAAQS and its own threshold and significance level. Just as NO_x and VOC do not have two different significance levels, one as precursor to ozone and one as an individual pollutant, SO₂ and NO_x would not have a different significance level as a precursor to PM_{2.5}. Therefore, the language as written is appropriate. No change has been made to the proposal as a result of this comment.

40. **SUBJECT:** Definition of "significant" for volatile organic compounds (VOCs).

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: Subdivision a of the proposed definition of "significant" (9VAC5-80-1110 C)

sets the significance level for VOCs at 25 tpy statewide. Currently, the VOC significance level is 40 tons per year everywhere in the Commonwealth except the Northern Virginia ozone nonattainment area by virtue of its former serious ozone nonattainment classification relative to the 1-hour ozone standard. Unless the department can provide justification for this change, the significance level for VOC should be restored to 40 tpy, except for ozone nonattainment areas classified as serious and above.

RESPONSE: The definition of significant is important for determining if a change is a "major modification." In the minor NSR program, this has meaning within the context of public participation. Currently public participation is required for major modifications using the significance levels in the major new source review programs. A 40 ton per year threshold is more consistent with the significant emissions increase currently used to determine if a modification is a major modification, but it is not conservative enough to reflect significance of minor NSR "major modifications" in some nonattainment areas. This difference can be provided for, however, and so a 40 ton per year threshold for all other areas can be restored. This comment is appropriate and changes have been made to reflect the intent of this comment.

41. **SUBJECT:** Definition of "significant" for an unlisted regulated pollutant.

COMMENTER: Dominion Resources Services, Inc.

TEXT: We support the proposed new subdivision b of the definition of "significant" (9VAC5-80-1110 C) that states that, "In reference to an emissions increase for a regulated air pollutant not listed in subdivision a of this definition, there is no emissions rate that shall be considered significant." The addition of this new provision would exempt the emission increases for a regulated air pollutant for which a minor source significant emission rate has not been established, and would alleviate the requirement for a project that resulted in any emission increase, no matter how miniscule, and the requirement for every new source to undergo minor NSR for a regulated pollutant, in the absence of an established significant emission rate for that pollutant. We believe this provision is crucial now that greenhouse gas emissions are considered regulated pollutants under the Clean Air Act.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

42. **SUBJECT:** Definition of "synthetic minor."

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The definition of "synthetic minor" (9VAC5-80-1110 C) as proposed could be

read to imply that only sources that have "taken restrictions" through a permit would qualify for status as a synthetic minor. There may be instances in which applicable, federally enforceable restrictions, such as NSPSs or maximum achievable control technology standards, might operate to limit the potential to emit to minor status for certain sources. In this case it would not be appropriate to say the source "has taken" the restriction (for example, by permit). We suggest the phrase "is subject to one or more restrictions" replace "has taken a restriction" in this definition.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

43. **SUBJECT:** Definition of "temporary facility."

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: VMA supports new provisions in the minor NSR regulations to handle temporary facilities, e.g., process pilot projects.

RESPONSE: Support for the proposal is appreciated. No change is made to the proposal in response to this comment.

44. **SUBJECT:** Definition of "toxic pollutant."

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: We could not find 9 VAC 5-60-92.B cited in this definition.

RESPONSE: This comment is appropriate and changes have been made to reflect the intent of this comment.

45. **SUBJECT:** General provisions.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: We support insertion of the phrase "Except as provided in 9VAC5-80-1105 A 2 b" at the beginning of 9VAC5-80-1120 C to clarify that the exemption for reduction in stack height for sources that have previously been determined to be exempt from the minor NSR program (provided in 9VAC5-80-1105 A 2 b) is preserved.

The term "net emissions increase" in 9VAC5-80-1120 G should read, "increases in uncontrolled emission rates," since term "net emissions increase" in 9VAC5-80-1110 C is being eliminated.

RESPONSE: This comment is appropriate and changes have been made to reflect

the intent of this comment.

46. **SUBJECT**: Action on permit application.

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: 9VAC5-80-1160 A provides that a source owner may request a "nonbinding applicability determination" from the department and specifies that the department must respond to the applicant within 30 days of the request. We take no particular issue with the inclusion of this new language, to the extent that it does not infer a new requirement that a source owner must request a nonapplicability determination in order to rely on its own independent determination that a project is exempt. The provision requires a timely (30-day) response on the part of the department, which could be helpful to the applicant if significant issues are identified up front by the department.

It has been established EPA and Virginia policy since the inception of the federal and state air permitting programs that it is the source owner's obligation in the first instance to determine whether a particular new source or change to an existing source requires a permit. There has never been, nor should there ever be, a requirement that a source owner ask the department (or EPA) for a nonapplicability determination prior to undertaking a project that the source owner has determined, on a sound basis, to be exempt from an air permitting requirement. On the other hand, this provision's reference to the (non)applicability determination by the department as "nonbinding" indicates that a source owner must be very wary of relying on such a determination. If a nonapplicability determination is nonbinding, how can a source owner be sure that the department (or EPA) won't subsequently repudiate it and take enforcement action against an owner who relies on it to proceed with construction or modification without a permit? In short, a source owner with the department's nonbinding nonapplicability determination proceeds at the owner's peril just as the owner would if he proceeded without it.

RESPONSE: There is no requirement for an owner to request this nonbinding applicability determination. The proposed language makes that clear with the use of the permissive verb "may." No change is made to the proposal in response to this comment.

47. **SUBJECT**: Action on permit application.

COMMENTER: Mirant Potomac River Generating LLC

TEXT: Mirant is suggesting a simple, commonsense addition that would streamline and expedite the permitting process for projects that reduce emissions. This is needed to counteract recent developments at the federal level that have eliminated

alternatives to permitting for such activities, unnecessarily delaying projects that will reduce emissions. For example, the United States Court of Appeals for the District Court of Columbia vacated the pollution control project exemption (see *State of New York v. EPA*, 413 F.3d 3, 40-42, D.C. Cir. 2005). More recently, EPA Region II has announced that the concept of "project netting" specifically provided for at 40 CFR 52.21(a) is no longer authorized. (Letter from Barbara A. Finnazzo, Director of Environmental Planning and Protection, EPA Region II to Kathleen Antoine, Environmental Director, HOVENSA, LLC; interpreting the phrase "sum of the differences" to mean "increases only.") Virginia's current proposal would allow a prospective applicant to request a "nonbinding" nonapplicability determination (9VAC5-80-1160 A); however, given the severe consequences of EPA's NSR enforcement initiative, prospective applicants are unlikely to rely on any determination that is "nonbinding."

To provide adequate certainty for applicants seeking to reduce emissions without the delay of the minor NSR permitting process, Mirant suggests adding language offering prospective applicants the option of requesting a "No Emissions Increase Permit," which would be issued by the department upon a determination that post-project emissions would not exceed past allowable emissions for any pollutant. This permit would cap emissions on a unit-by-unit basis at those past allowable emissions. The language would be added as 9VAC5-80-1160 H as follows:

H. In the alternative, an applicant may submit a permit application for a "No Emission Increase Permit" (NEIP) documenting past allowable emissions and projected future actual emissions. Upon a demonstration that the projected future actual emissions will not exceed past allowable emissions on a pollutant-by-pollutant, unit-by-unit basis, the department shall issue a NEIP limiting emissions for each pollutant from each unit referenced in the NEIP application to the specified past allowable emissions levels.

In effect, this would allow improvements to be made in the emissions rates of one or more pollutants without having to address permitting of pollutants that are unaffected, in the sense of causation, by the improvements. For example, in the case of a plant that seeks to install low NO_x burners, it is unnecessary to require submission of a minor NSR permit application or processing of the application regarding SO₂ since the emissions of SO₂ are not affected (i.e., no increase in SO₂ emissions is caused) by the low NO_x burners. We note that the proposed regulations already state that to the extent the proposed regulations are inconsistent with federal regulations the latter govern, so there is no potential for conflict with federal law.

RESPONSE: A nonbinding applicability determination should be sufficient to provide certainty to sources unsure of their applicability status. No change is made to the proposal in response to this comment.

48. **SUBJECT**: Public participation.

COMMENTER: Dominion Resources Services, Inc.

TEXT: In 9VAC5-80-1170 D 3, the department needs to clarify that the 100 tpy threshold, applied to a project that results in an increase in the potential to emit of any regulated pollutant that would equal or exceed that threshold, and triggering the requirement for a 30-day comment period, does not apply to greenhouse gases until a significant emission rate has been established for greenhouse gases and the department has developed and solicited for public review and comment an appropriate threshold level for greenhouse gases that is commensurate with a yet-to-be determined significant emission rate. Subjecting projects that result in an increase in the potential to emit greenhouse gases as low as 100 tpy to a 30-day comment period would overwhelm department resources and cause extensive permitting delays.

RESPONSE: We agree that a 100 tpy threshold is inappropriate for greenhouse gases, and plan to address this issue in a future action. No change has been made to the proposal as a result of this comment.

49. **SUBJECT**: Public participation.

COMMENTER: Virginia Manufacturers Association (VMA).

TEXT: Under 9VAC5-80-1290 C, if a significant permit amendment must undergo the public notice, comment and hearing process specified in 9VAC5-80-1170 D and E, the public participation process should be limited exclusively to the subject of the significant permit amendment. The remainder of the permit is not open for public comment. 9VAC5-80-1290 C should state this limitation on public participation for a significant permit amendment.

RESPONSE: 9VAC5-80-1290 C specifies that the provisions of 1170 D and E apply to the requested change, with the intention that the entire permit is not automatically opened for review and comment. However, if other conditions are affected by the requested change, such as recordkeeping provisions for a requested change in monitoring, those modified provisions might also be subject to comment. There is no language that would make these finer points clear without unnecessarily restricting either the public or the department. The department will implement this provision to ensure that the permit is not opened for comment inappropriately. No change is made to the proposal in response to this comment.

50. **SUBJECT**: Minor permit amendments

COMMENTER: Dominion Resources Services, Inc.; Virginia Manufacturers Association

TEXT: The proposed addition of subdivision 1 to 9VAC5-80-1280 C would narrow the ability to rescind a permit condition when the underlying legal basis for that condition no longer applies only if such condition does not "cover" a regulated air pollutant. If a permit term is obsolete or unnecessary because of an underlying change in the law, the permit condition should no longer be legally enforceable and should be removed from the permit regardless of whether the condition involves a regulated pollutant or other matter.

This provision is confusing and in its widest application will virtually eliminate the usefulness of this rescission provision. What does it mean for a permit condition to "cover" a regulated pollutant? Obviously, a permit condition setting an emission limit would "cover" a regulated pollutant. Take the classic example of the delisting of acetone as a VOC. This proposed new qualification in 9VAC5-80-1280 C (1) would appear to preclude the elimination of a permit term setting a VOC emission limit even though, prior to the delisting of acetone, acetone was the only VOC emitted. That's because, as stated in subdivision C (1), the permit condition "covers a regulated air pollutant," VOC. If a permit term is obsolete or unnecessary because of an underlying change in the law, the permit condition should be expunged from the permit no matter what.

This proposed revision should be deleted.

RESPONSE: A previous revision to the minor new source review program was withdrawn for the lack of this important provision. The cited example would be an example of how the new provision works. Acetone would no longer be a VOC and would no longer be a regulated pollutant. Under subdivision 2, the VOC emissions would drop to zero and there would not longer be any regulated pollutants emitted under this hypothetical one-pollutant permit. Under that scenario, all of the applicable terms of the permit could be rescinded. This provision is critical to protecting the program, and is sufficient to allow rescission of permit terms and conditions as intended. No change is made to the proposal in response to this comment.

TECHNICAL SUPPORT DOCUMENT

The supporting document cited below forms the technical basis and justification for some of the key changes in the revision. A copy of the document is attached.

**IMPACT ANALYSIS OF PROVISIONS
AFFECTING MINOR NSR PROGRAM**

TEMPLATES\SIP-REG\REG04
SIP\MINOR NSR\H05-SIP-4.DOC

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

**IMPACT ANALYSIS OF PROVISIONS
AFFECTING MINOR NSR PROGRAM**

**MINOR NSR PROGRAM REGULATION
(9VAC5 CHAPTER 80, ARTICLE 6)**

GENERAL

Virginia's minor new source review (MNSR) program (Article 6 of 9VAC5 Chapter 80) has been changed to add definitions and other provisions that will facilitate the clear and consistent identification of the emissions units subject to the program (i.e., affected units). For a "new stationary source," the affected emissions units will be all emissions units located to an undeveloped site. For a "project" at an existing stationary source, the affected emissions units will be all new or added emissions units and all modified emissions units that make up the project. (See 9VAC5-80-1100 A, 1110 C, and 1120 B.)

The MNSR program has been changed to add definitions and other provisions that will facilitate the clear and consistent identification of the pollutants, including precursors, subject to the program (i.e., regulated air pollutants). (See 9VAC5-80-1110 C.)

Provisions have also been restructured to clarify how changes in stack height will be subject to permit review requirements. (See 9VAC5-80-1100 A, 1105 A 2 b, and 1120 C.)

Impact: Article 6 provides a procedural and legal basis for issuing new source review (NSR) permits for proposed new stationary sources or projects that do not otherwise qualify for review under the major NSR program. This regulation (i) enables the permitting authority to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, (ii) requires the permitting authority to assess the impact of the emissions from the facility on air quality, and (iii) provides a state and federally enforceable mechanism to enforce permit program requirements. The regulation also provides the basis for the permitting authority's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review.

On September 1, 2002, the Commonwealth launched a major reform (2002 MNSR program) to its NSR program that changed the approach used to determine permit applicability. The 2002 MNSR program uses a permit applicability approach that looks at the emissions changes from a source-wide perspective to determine applicability. Applicability is based on the net emissions increase (NEI) in actual emissions based on

all the source-wide emissions changes due to or directly resultant from the physical or operational changes. Netting involves considering the emissions increases and decreases from all of the source-wide emissions changes from the affected units in the project.

In the 2002 MNSR program, the netting concept is used primarily to avoid NSR by using netting operations to avoid both MNSR and major NSR permit applicability. This approach works in major NSR due to the use of MNSR program as an underlying permit program to make the netting operations state and federally enforceable. While the netting concept, essential to determining applicability, works well in major NSR, it does not work in MNSR, primarily due to the lack of an underlying permit program to make the netting operations state and federally enforceable. Thus, there was no practical way to net out of MNSR permit applicability, as is the case with major NSR. In order to work within the intent of the netting concept, the permitting authority promulgated procedures that would allow the netting concept to be used for BACT applicability. The MNSR permit itself then would become the vehicle to make the netting operations for BACT applicability determinations federally and state enforceable. It would also be used as a vehicle to place emission caps on emissions units potentially subject to BACT in order to legally maintain their emissions below the applicability thresholds for the BACT requirements. Using the netting concept resulted in some sources being able to avoid BACT; however, it also resulted in some sources having to apply BACT to additional units. The result of using the NEI approach is increased complexity of the MNSR program and the introduction of a new burden on both the permitting authority and regulated community. The 2011 MNSR program bases permit applicability on the uncontrolled emissions from only those emissions units that undergo a physical or operational change in the project. This approach is similar to that used in the current SIP-approved version of the MNSR program (the predecessor to the 2002 MNSR program) and is far simpler to implement and make permit applicability determinations.

The above changes are the primary reason for the promulgation of the 2011 MNSR program and are intended to simplify the program requirements and reduce the complexity of the permit program. In addition, the implementation of the 2002 MNSR program, over time, resulted in the considerable implementation experience. The permitting authority reviewed this implementation experience and made other program changes as appropriate.

It is not expected that implementation of the 2011 MNSR program will result in an adverse impact on air quality.

PUBLIC PARTICIPATION

The public participation provisions have been changed to make them at least as stringent as the current SIP-approved version of the MNSR program. (See 9VAC5-80-1170 D.) In addition, provisions have been added to require a public comment period for permit applications for any project that equals or exceeds the 100 tons per year

threshold. (See 9VAC5-80-1170 D 3.)

Impact: The public participation provisions for major modifications have been revised to correct the deficiency noted in the Federal Register items relating to the current SIP-approved version of the MNSR program: September 12, 1995 (60 FR 47320) and July 24, 1996 (61 FR 38388). The provisions in question, 9VAC5-80-1170, have been revised to make them at least as stringent as the current SIP version (VR 120-08-01 C 1 a and C 4 b through d) as reflected in 40 CFR 52.2420. Changing the regulation to reflect the current SIP will ensure that the permitting authority conducts public participation as provided in the current SIP. The addition of the provisions in 9VAC5-80-1170 D 3 will make the regulation more stringent than the current SIP. EPA approval of these changes will allow the Commonwealth to implement its MNSR program with public participation provisions that are more stringent than the current SIP.

EXEMPTIONS

Below is a list of each of the subsections of 9VAC5-80-1100, 1110 and 1105 that specifically affect exemptions followed by the location (in parenthesis) of the corresponding provision in the current SIP-approved version of the MNSR program (9VAC5-80-10 and 11). This information is provided because many of the exemption changes are relocations of existing provisions and not new ones. Those that are new are marked accordingly. Following that is a description of the change if it affects criteria pollutants. Below that is the impact assessment; if there is none, it is marked accordingly.

9VAC5-80-1100 (applicability)

Subsection A (9VAC5-80-10 A 1): The program has been changed such that reconstruction of an emissions unit by the replacement of some of its components will no longer be treated differently from the modification of an emissions unit. Such changes will no longer be exempt if the potential to emit is not increased; but instead, will only be exempt if the increase in the emissions rate is less than the exempt emission rates for a project at an existing stationary source, just like any other modified emissions unit.

Impact: First, the concept of reviewing reconstructions originated from the NSPS requirements, not from any EPA requirement under the CAA or the SIP. Because of this, most permitting authority staff and the regulated community find it difficult to rationalize the need to issue a permit for the replacement of older equipment with newer, less polluting equipment. Second, it is difficult for the permitting authority to provide any analysis to show that there is an adverse air quality impact due to replacements unless there is an increase in emissions. Finally, the criteria for determining whether a replacement qualifies as reconstruction is unduly complex and didn't fit in with the overall purpose of simplifying the permit applicability provisions of the MNSR program. Reconstruction of an emissions unit by replacing the entire

emissions unit will continue to be exempt as a "replacement of an emissions unit" as long as the potential to emit does not increase as a result of that replacement. (See 9VAC5-80-1105 A 2 a.) Reconstruction will only exist in the MNSR program as it pertains to the enforcement of historical applicability determinations. (See 9VAC5-80-1210 A]

Subsection C (9VAC5-80-10 A 3): Provisions have been added to allow exempted stationary sources or projects to opt into permit review. Otherwise, editorial changes only.

Impact: None.

Subsection D (new): Provisions have been added to specify how the counting of fugitive emissions is used to determine permit applicability. Fugitive emissions are counted if quantifiable; however, if fugitive emissions are the only emissions that cause the new stationary source or project to be subject to MNSR, the new stationary source or project may be exempt from permit review.

Impact: Although this could be viewed as a clarification, it is unlikely to reduce the number of projects subject to the 2002 minor NSR program regulation. Given that the regulation is silent on this issue and how the issue was addressed in implementation is unknown, the impact of the change is difficult to determine; however, no adverse impact to air quality is anticipated.

Subsection E (9VAC5-80-10 A 4): Editorial changes only.

Impact: None.

Subsection F (9VAC5-80-10 P): Editorial changes only.

Impact: None.

Subsection G (new): Provisions have been added to state that (i) exemption from MNSR does not exempt a project from major NSR, and (ii) exemption from major NSR does not exempt a project from MNSR.

Impact: Although the changes may have no air quality impact, this provision adds an important safety net provision to control some sources that may escape permitting.

9VAC5-80-1110 (definitions)

Subsection C (9VAC5-80-10 B 3): Changes to definitions as described below:

The definition of "major modification" has been changed such that the cross reference to the applicable definition of major modification in the major NSR program is replaced

by pollutant-specific thresholds similar to those used to define a major modification under the major NSR program.

The definitions of "major modification" and "major stationary source" have been changed to allow consideration of emission limits that will be placed on the source as a result of the relevant permit application.

The definition of "modification" has been changed to include a few of the exemptions that are included in the applicable definition of major modification in the major NSR program.

Impact: These changes have been made to allow the MNSR program to be implemented without undue reliance on the provisions of the major NSR programs, while still trying to maintain some compatibility. Under the 2002 minor NSR program regulation, changes to the major NSR program regulations resulted in a certain amount of confusion until the corresponding MNSR program provisions could be updated accordingly. It is not expected that these changes will result in an adverse impact on air quality.

Subsection C (9VAC5-80-10 B 3): The program has been changed such that nonroad engines will no longer be considered as part of a stationary source. (See 9 VAC 5-80-1110 C, definitions of "non-road engine" and "stationary source".)

Impact: This is considered to be a clarification and it is unlikely to reduce the number of projects subject to the regulation. Given that under the 2002 minor NSR program regulation these types of sources have been regarded as mobile sources and not subject to permitting, the impact of the change is likely to be minimal.

9 VAC 5-80-1105 (exemptions - additions and revisions)

Subsection A (9VAC5-80-11 A): Editorial changes only.

Impact: None.

Subsection A 1 (new): A general statement that provides a lead-in to clarify the provisions therein.

Impact: None.

Subsection A 1 a (9VAC5-80-11 A 1): Editorial changes only.

Impact: None.

Subsection A 1 b (new): Adds an exemption for vegetative waste recycling/mulching operations.

Impact: The emissions from these units under the restrictions cited in the exemption are expected to be less than the new source emission rate levels in the SIP-approved minor NSR program regulation. Thus, these units would be exempt anyway. The purpose of this exemption, as is the case with many of the exemptions in subsection B, is to reduce the administrative burden of the determining exemptions by eliminating the need to calculate emissions for some source types.

Subsection A 1 c (9VAC5-80-11 G): Revises the criteria to qualify for the portable emissions unit exemption.

Impact: This change is considered a clarification. The added criteria ensure that any future relocation of a permitted portable emissions unit would not be subject to new source review requirements for emissions not covered by the applicable permit. Better compliance will ensure fewer emissions.

Subsection A 1 d (9VAC5-80-10 N 1): Editorial changes only.

Impact: None.

Subsection A 1 e (new): Adds an exemption for the use of an alternative fuel or raw material if the owner demonstrates that the emissions will decrease and the use does not otherwise qualify as a project subject to permit review.

Impact: This provision was added because § 10.1-1322.4 of the Code of Virginia was changed to require it. In any case, it is not expected that there will be any adverse air quality impact because this provision provides an exemption only if the use of alternative fuel or raw materials does not qualify for permit review.

Subsection A 2 (new): A general statement that provides a lead-in to define the applicability of the provisions therein.

Impact: None.

Subsection A 2 a (new): Adds an exemption for the “replacement of an emissions unit” as long as the potential to emit does not increase as a result of that replacement.

Impact: First, the concept of reviewing at replacements originated from the NSPS requirements not from any EPA requirement under the CAA or the SIP. Because of this, most permitting authority staff and the regulated community find it difficult to rationalize the need to issue a permit for the replacement of older equipment with newer, less polluting equipment. Second, it difficult for the permitting authority to provide any analysis to show that there is an adverse air quality impact due to replacements unless there is an increase in the potential to emit. For these reasons, the provision was added.

Subsection A 2 b (new): Supplements the restructured provisions that clarify how changes in stack height will be subject to permit review requirements. (See 9VAC5-80-1100 A and 1120 C.)

Impact: None.

Subsection A 3 (9VAC5-80-11 A 2): Editorial changes only.

Impact: None.

Subsection A 4 (new): Adds provisions to require owners of exempted facilities to maintain records to demonstrate qualification for exemption from permit applicability.

Impact: This it is not expected to affect air quality, but will provide a tool to ensure that source owners do not claim exemptions without proper records to justify the claim.

Subsection B 1 (9VAC5-80-11 B 1): The exemption has been changed to (i) limit affected units to external combustion units; (ii) expand the exemption to include space heaters, and (iii) in ozone nonattainment and maintenance areas, aggregate similar types of fuel burning equipment that are included in a single project for the purpose of comparison with the exempt size criteria; (iv) delete the NSPS limiting factor for gaseous fuel units; and (iv) delete exemption for units that power mobile sources (a provision now in 9VAC5-80-1105 B 3).

Impact: The clarification of what types of emissions units may be exempt as “fuel burning equipment” (including the addition of space heaters to the exemption as another type of external combustion unit) formalizes the use of this exempt category as it was previously implemented, so there is no significant impact predicted as a result of this change. Aggregation of emission units for the purposes of applying this exemption serves only to reduce the number of exempt emissions units, and will subject more and smaller emissions units to new source review in ozone nonattainment and maintenance areas. The impact of this change will be fewer emissions from any emissions units large enough to justify the implementation of BACT. The SIP-approved exclusion of NSPS gas-fired units from this exemption did not reduce emissions because the emissions units were subject to NSPS requirements whether they were exempt from new source review or not. Deletion of this exclusion will have no impact on emissions. The deleted exemption for engines from mobile sources was replaced by an exemption in 9VAC5-80-1105 B 3, with the result that there will be no impact from this administrative change.

Subsection B 2 (new): Adds provisions to exempt engines and turbines used for emergency purposes which do not exceed 500 hours of operation per year and meet certain other criteria.

Impact: The emissions from these units under the restrictions cited in the exemption would be less than the SIP-approved new source exemption levels by emission rate.

Thus, these units would be exempt under the SIP-approved minor NSR program regulation, so there would be no adverse impact as a result of this change. The purpose of this exemption, as is the case with many of the exemptions in subsection B, is to reduce the administrative burden of the determining exemptions by eliminating the need to calculate emissions for some source types.

Subsection B 3 (9VAC5-80-11 B 1 e): Editorial changes only.

Impact: None.

Subsection B 4 through 9 (9VAC5-80-11 B 2 through 16): Deletes the exemptions based on emission rate (VOC coating operations). Retains the remaining exemptions with editorial changes only.

Impact: Although the exemption was removed for these source types at this location, they are still eligible to use the emission rate exemptions under 9 VAC 5-80-1105 C or D, as the case may be. Experience has shown that the source types for which the exemptions were deleted have been rarely used. Thus, it is not expected that there will be any adverse impact on air quality. Also, the retention of multiple exemptions that are based on various emission rates presents a complex problem of sorting out exactly which exemption applies and has an adverse impact on consistent implementation. For this reason, only those that are not based on emission rate were retained. The purpose of this change, as is the case with many of the changes to subsection B, is to reduce the administrative burden of the determining exemptions for some source types.

Subsection B 10 (9VAC5-80-11 B 17): Editorial changes only.

Impact: None.

Subsection B 11 (9VAC5-80-11 B 18): Adds language to precisely define the sawmill exemption criteria and expand the exemption to include planing mills.

Impact: This change was made primarily to clarify the exemption and ensure that the sawmill exemption is limited to certain activities and facilities that engage in rough cut activities that would produce particulate matter but not significant amounts of PM₁₀ or PM_{2.5}. Since particulate matter is no longer the criteria pollutant, it is not expected that there will be an adverse impact on air quality.

Subsection B 12 (new): Adds exemption for exhaust flares at natural gas and coal bed methane extraction wells.

Impact: These activities are generally regarded as control methods, not sources in and of themselves. Thus, as a practical matter, it seems unnecessary to issue a permit that would not result in any impact on emissions.

Subsection B 13 (new): Adds exemption for certain process testing and remediation

projects that remain in existence for less than a year.

Impact: The emissions from these units under the restrictions cited in the exemption are expected to be less than the SIP-approved emission rate for new source. Thus, these units would already be exempt under the SIP-approved minor NSR program regulation, so there would be no adverse impact as a result of this change. The purpose of this exemption, as is the case with many of the exemptions in subsection B, is to reduce the administrative burden of the determining exemptions by eliminating the need to calculate emissions for some source types.

Subsection B 14 (new): Adds exemption for open pit incinerators subject to the open burning rule.

Impact: The authorized use of open pit incinerators is a transitory, on-site practice regulated by the open burning rule (9VAC5-130-10 et seq.) to dispose of non-hazardous materials (usually land clearing debris) and in practice, it has not been subject to review under minor new source review requirements. This exemption is an administrative change that clarifies and formalizes that regulatory relationship, so there is no impact on emissions as a result of this exemption. It should be noted that the open burning rule is part of the SIP to a limited extent. The open burning rule is included in the SIP for limited use as a control measure to implement the open burning (including open pit incinerators) seasonal (May, June, July, August and September) restrictions to reduce and maintain volatile organic compound (VOC) emissions in VOC emissions control areas. Since the control measure for open pit incinerators in the SIP prohibits their use in certain areas during certain times of the year, whether a permit is required or not is a mute issue. It should also be noted that the open pit incinerators subject to the open burning rule do not include air curtain incinerators for which emission guidelines have been promulgated under 40 CFR Part 62 or for which standards of performance have been promulgated under 40 CFR Part 60.

Subsection B 15 (new): Adds exemption for small swine and poultry incinerators on farms.

Impact: The emissions from these units under the restrictions cited in the exemption would be less than the SIP-approved emission rate for new source. Thus, these units would already be exempt under the SIP-approved minor NSR program regulation, so there would be no adverse impact as a result of this change. The purpose of this exemption, as is the case with many of the exemptions in subsection B, is to reduce the administrative burden of the determining exemptions by eliminating the need to calculate emissions for some source types

Subsection C 1 (9VAC5-80-11 D): Revises the exemption identification criteria to be consistent with changing the MNSR program such that the provisions will facilitate the clear and consistent identification of the emissions units subject to the MNSR program (see General above). Adds a number of exemptions for designated (noncriteria and non-HAPs) pollutants.

Impact: Under the current SIP-approved version of the MNSR program regulation, adding a new unit to an existing stationary source would be reviewed under the emission rate exemption levels for new stationary sources. That is still the case if the new unit and the stationary source are the same. If not, adding a new unit qualifies as a project and is subject to review under the more restrictive emission rate exemption levels for projects. It is not expected that this program change will result in an adverse impact on air quality. The addition of exemption levels for designated pollutants was added to make the program fit better with major NSR; however, where practical, the levels were set 10% or more below the PSD NSR program significance levels.

Subsection C 2 (new): Allows sources exempted under the PM₁₀ or PM_{2.5} exemption to be exempted for particulate matter but allows use of the particulate matter exemption if PM₁₀ or PM_{2.5} emission levels cannot be determined.

Impact: Although the NAAQS has been changed to PM₁₀ and PM_{2.5}, some sources cannot determine their PM₁₀ or PM_{2.5} emissions; and many existing source and NSPS emission limits remain expressed as particulate matter. This provision provides a definitive means to use particulate matter exemption levels as a surrogate for PM₁₀ and PM_{2.5} where necessary. The respective values are taken from the PSD NSR program significance levels.

Subsection C 3 (new): Adds provisions to exempt a stationary source if all of the emissions considered in calculating the uncontrolled emission rate increase of the stationary source are fugitive emissions.

Impact: Although this could be viewed as a clarification, it is unlikely to reduce the number of projects subject to the MNSR program regulation. Given that the current SIP-approved version of the regulation is silent on this issue and how the issue was addressed in implementation is unknown, the impact of the change is difficult to determine; however, no adverse impact to air quality is anticipated.

Subsection D 1 (9VAC5-80-11 E): Revises the exemption identification criteria to be consistent with changing the MNSR program such that the provisions will facilitate the clear and consistent identification of the emissions units subject to the MNSR program (see General above). Adds a number of exemptions for designated (noncriteria and non-HAPs) pollutants.

Impact: The main substantive change affects the addition of new emissions units to an existing stationary source. Under the current SIP-approved version of the MNSR program regulation, adding a new unit would be reviewed under the emission rate exemption levels for new stationary sources. That is still the case if the new unit and the stationary source are the same. If not, adding a new unit qualifies as a project and is subject to review under the more restrictive emission rate exemption levels for projects. It is not expected that this program change will result in an adverse impact on air quality. The addition of exemption levels for designated pollutants was added to make

the program fit better with major NSR; however, where practical, the levels were set 10% or more below the PSD NSR program significance levels.

Subsection D 2 (new): Allows sources exempted under the PM₁₀ or PM_{2.5} exemption to be exempted for particulate matter but allows use of the particulate matter exemption if PM₁₀ or PM_{2.5} emission levels cannot be determined.

Impact: Although the NAAQS has been changed to PM₁₀ and PM_{2.5}, some sources cannot determine their PM₁₀ or PM_{2.5} emissions; and many existing source and NSPS emission limits remain expressed as particulate matter. This provision provides a definitive means to use particulate matter exemption levels as a surrogate for PM₁₀ and PM_{2.5} where necessary. The exemption levels are set lower than those for new sources and the ratio of the respective values is approximated from the PSD NSR program significance levels.

Subsection D 3 (new): Adds provisions to exempt a project if all of the emissions considered in calculating the uncontrolled emission rate increase of the project are fugitive emissions.

Impact: Although this could be viewed as a clarification, it is unlikely to reduce the number of projects subject to the MNSR program regulation. Given that the current SIP-approved version of the regulation is silent on this issue and how the issue was addressed in implementation is unknown, the impact of the change is difficult to determine; however, no adverse impact to air quality is anticipated.

Subsection E (9VAC5-80-11 I): Not applicable, provisions are not in the current SIP-approved version of the MNSR program.

Impact: Under the current SIP-approved version of the MNSR program regulation, this subsection applies to only noncriteria pollutants. Even though the provision has been edited, it is substantively the same; thus, should have no adverse impact on air quality related to criteria pollutants.

Subsection F (new): Adds provisions to exempt affected sources from the MNSR program consistent with the federal hazardous air pollutant new source review program.

Impact: None; affects only the provisions added to allow implementation of the federal hazardous air pollutant new source review program via the MNSR program. (See 9VAC5-80-1100 I and 1170 A.)

9VAC5-80-1105 (exemptions - deletions)

9VAC5-80-11 C: The provisions concerning exemption levels have been simplified by deleting the provisions that prohibit the exemption of certain facilities based on source category.

Impact: The list of source types is being deleted to simplify the regulation. These facilities will now be subject to the generic emissions thresholds to determine exemption eligibility (see 9VAC5-80-1105 C and D (old 9 VAC 5-80-11 D and E)). It is unlikely that most of these source types would be able to qualify for any of the other exemptions in the regulation; thus, there is no impact on air quality.

9VAC5-80-11 F: The provisions that prohibit the exemption of certain NSPS and NESHAP facilities unless the facility would be subject only to recordkeeping or reporting requirements have been deleted.

Impact: As EPA has promulgated NSPSs for smaller source categories, this provision has placed a greater burden upon both the permitting authority and the regulated community that far outweighs its benefit, if any. For example, the Commonwealth declined to accept delegation of authority to enforce the NSPS for Stationary Compression Ignition Internal Combustion Engines (Subpart IIII of 40 CFR Part 60, see 9VAC5-50-410) because, in doing so, it would make the affected facilities subject to the MNSR program. Retention of this provision would also be inconsistent with the overall purpose of simplifying the MNSR program. It is expected that this will have a minimal impact on air quality because the new affected facilities will be covered by an NSPS and, thus, will not go uncontrolled. Exemptions for NESHAP sources are now covered under 9VAC5-80-1105 F.

9 VAC 5-80-11 H: The provisions that allow for the application of existing source regulations to facilities exempted under 9 VAC 5-80-11 B has been deleted as duplicative of some of the provisions of 9 VAC 5-80-1100 C 2.

Impact: None.

OTHER CHANGES OF NOTE

Below is a list of other changes to the MNSR program worthy of note; however, it is not expected that these changes will result in an adverse impact on air quality.

1. Provisions have been added (in 9VAC5-80-1100 M, 1105 C and D and 1110 C) to allow implementation of the federal requirements for the new PM_{2.5} air quality standard.
2. Provisions have been added (in 9 VAC 5-80-1100 I, 1105 F and 1170 A) to allow implementation of the federal hazardous air pollutant new source review (FHAPNSR) program via the MNSR program. This has been accomplished by incorporation by reference rather than trying to alter the text of the regulation to accommodate these program elements; it was very difficult to write text to implement this program given the differences and complexities of the various program elements. The FHAPNSR program includes the various preconstruction approval requirements found in 40 CFR Part 61 and 40 CFR Part 63 (including the § 112(g) requirements). The provisions covering public participation have been changed to require a public comment period only for

permit applications requiring a case-by-case maximum available control technology (MACT) determination under the FHAPNSR program. Exemptions for affected sources under the MNSR program are the same as for those under the FHAPNSR program.

3. Provisions have been added (in 9VAC5-80-1105 F) to allow permit terms and conditions that are state-only enforceable to be designated as such in the permit. This is consistent with the intent that all permit terms and conditions (including those relating to federal HAPs) issued under the MNSR program be federally enforceable as provided in 40 CFR 52.23 except those identified as state-only enforceable in the permit.

4. Provisions have been added (in 9VAC5-80-1140 E) to require certification from the permit applicant that the applicant understands that issuance of the MNSR permit (i) does not shield the applicant from enforcement of the major NSR permit program and (ii) does not relieve the applicant from compliance with the major NSR program.

5. Provisions have been added (in 9VAC5-80-1160 A) to provide for processing and issuing informational permit applicability determinations.

6. Provisions have been added (in 9VAC5-80-1180 B, C, and D) to ensure that permit terms and conditions that establish emissions caps and emission standards are enforceable as a practical matter.

7. The criteria for invalidation of permits due to delays in construction have been changed (in 9VAC5-80-1210 B) to conform to the similar criteria in other new source review programs.

8. Provisions have been added (in 9VAC5-80-1250) to specify the procedures and criteria for the issuance of general permits.

9. Provisions have been added (in 9VAC5-80-1255) to specify the procedures and criteria for the combining of terms and conditions of certain permits to be combined.

10. Provisions have been added (in 9VAC5-80-1260 through 1300) to specify the procedures and criteria for the taking actions to change permits.

11. Finally, a number of other provisions have been rewritten or restructured to increase clarity, including: specifying how regulatory changes affect new and previous permit applications (9VAC5-80-1100 J); providing more detail as to information required for permit application review (9VAC5-80-1150); providing enforcement information relative to the use of stack test waivers (9VAC5-80-1200 G); and specifying the requirements for making mutual determinations that permits are invalid, revoked or suspended (9VAC5-80-1210 L and M).

**BACT APPLICABILITY FOR MNSR PROGRAM
(9VAC5 CHAPTER 50, ARTICLE 4)**

Below is a list of changes to the MNSR program that affect the applicability of best available control technology (BACT) to the affected emissions units. These changes have been made to the provisions affecting BACT applicability and implementation in order to facilitate the overall purpose of simplifying the MNSR program. It is not expected that these changes will result in an adverse impact on air quality.

1. Changes have been made to the definitions and provisions covering applicability and standards to bring those provisions in line with the changes being made to the MNSR program to facilitate the clear and consistent identification of the emissions units subject to the permit program. (See 9VAC5-50-240 A.)

2. Provisions have been added to clarify that the provisions of Article 4 of 9VAC5 Chapter 50 apply only to facilities subject to the new source review program. (See 9VAC5-50-240 A.)

3. Provisions have been added to exempt any regulated air pollutant except to the extent that it is regulated under 9VAC5-60 (Hazardous Air Pollutant Sources), but the exemption does not extend to other properties of the exempted pollutants which may require regulation under 9VAC5-40 (Existing Stationary Sources) or 9VAC5-50 (New and Modified Stationary Sources). (See 9VAC5-50-240 C.)

4. The definition of "best available control technology (BACT)" has been changed to allow consideration of additional factors for making BACT determinations for sources subject to the MNSR program. (See 9VAC5-50-250 C.)

5. Provisions have been added such that BACT determinations will be required for all emissions units that are subject to the MNSR program. The requirement for a BACT determination will be applied to each pollutant emitted by the new source or project in amounts equal to or greater than the exempt emission rate threshold; however, permit terms and conditions may be applied to any pollutant from the affected emissions units as may be necessary to support the BACT determination. (See 9VAC5-50-260 A, B, and C.)

6. For phased construction projects, provisions have been added specifying that BACT must be reviewed no later than 18 months prior to the commencement of construction of each independent phase of the project. (See 9VAC5-50-260 D.)