9 VAC 5 CHAPTER 80. PERMITS FOR STATIONARY SOURCES.

ARTICLE 8.
Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas.
(replaces Article 8 [9VAC5-80-1700 et seq.])

9 VAC 5-80-1605. Applicability.

A. The provisions of this article apply to the construction of any new major stationary source or any project at an existing major stationary source.

B. The provisions of this article apply in prevention of significant deterioration areas designated in 9 VAC 5-20-205.

C. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not yet commenced on the source or modification.

D. Unless specified otherwise, the provisions of this article apply as follows:

1. Provisions referring to "sources," "new or modified sources" or "stationary sources" apply to the construction of all major stationary sources and major modifications.

2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9 VAC 5-80-1100 et seq.), Article 7 (9 VAC 5-80-1400 et seq.), or Article 9 (9 VAC 5-80-2000 et seq.) of this part.

3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9 VAC 5-80-1625 G.

E. Unless otherwise approved by the board or prescribed in these regulations, 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 9 VAC 5-80-1775 A prior to September 1, 2006. Any permit applications that have not been determined to be complete as of September 1, 2006 shall be subject to the new provisions.

F. Regardless of the exemptions provided in this article, 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.

G. The requirements of this article will be applied in accordance with the following principles:

1. Except as otherwise provided in subsection H of this subsection, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 and 4 of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, is significant for that pollutant.

4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project is significant for that pollutant.

5. The hybrid test for projects that involve multiple types of emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 and 4 of this subdivision as applicable with respect to each emissions unit, for each type of emissions unit is significant for that pollutant. For example, if a project involves both an existing

emissions unit and a new unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision ~~5~~ 4 of this subsection for the new unit.

H. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9 VAC 5-80-1865.

I. The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9 VAC 5-50-400 et seq.) of Part II of 9 VAC 5 Chapter 50 and Article 1 (9 VAC 5-60-60 et seq.) and Article 2 (9 VAC 5-60-90 et seq.) of Part II of 9 VAC 5 Chapter 60.

J. The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9 VAC 5-20-21.

9VAC5-80-1615. Definitions.

A. As used in this article, all words or terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-80-280 9VAC5-50-280 and 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:

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-1865. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards as set forth in 40 CFR Parts 60, 61, and 63;

b. The applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to 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):

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

b. Any limit 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.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. 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.

e. 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.

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

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

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

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

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

k. 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 permit issued under this article.

l. 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 this article.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required under this article, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major

stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the board has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this subsection.

"Baseline area":

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: (i) for SO_2, NO_2, or PM_{10}, equal to or greater than 1 $\mu g/m^3$ (annual average); or (ii) for $PM_{2.5}$, equal to or greater than 0.3 $\mu g/m^3$ (annual average).

b. Area redesignations under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(1) Establishes a minor source baseline date; or

(2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the board rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

"Baseline concentration"

a. Means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition; and

(2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

(1) In the case of PM_{10} and sulfur dioxide, January 6, 1975;

(2) In the case of nitrogen dioxide, February 8, 1988; and

(3) In the case of $PM_{2.5}$, October 20, 2010.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

(1) In the case of PM_{10} and sulfur dioxide, August 7, 1977;

(2) In the case of nitrogen dioxide, February 8, 1988; and

(3) In the case of $PM_{2.5}$, October 20, 2011.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and

(2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the

board may rescind any such minor source baseline date where it can be shown, to the satisfaction of the board, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are 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 that mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that 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 or modification through 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 that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. 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 emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities 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. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., that have the same first two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

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

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this definition, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

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

a. Are permanent;

b. Contain a legal obligation for the owner to adhere to the terms and conditions;

c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. 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 on a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

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

a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

b. 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.

c. All terms and conditions (unless expressly designated as not federally enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.

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

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review permit issued under regulations approved by the EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally 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:

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act;

(2) 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;

(3) The operating permit program requires that all emission 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";

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

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

g. Limitations and conditions in a 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.

h. 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 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.

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

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Lowest achievable emission rate" or "LAER" is as defined in 9VAC5-80-2010 C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant for nonattainment areas in an amount that is equal to or greater than the major source threshold for the PAL pollutant in subdivision a (1) of the definition of "major stationary source " in 9VAC5-80-2010 C.

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_X shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the federal Power Act.

(3) Use of an alternative fuel by reason of any order or rule under § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan; and

(b) Other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

(9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(10) The reactivation of a very clean coal-fired electric utility steam generating unit.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 9VAC5-80-1865 for a PAL for that pollutant. Instead, the definition of "PAL major modification" shall apply.

"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"

a. Means:

(1) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

(a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(b) Coal cleaning plants (with thermal dryers).

(c) Kraft pulp mills.

(d) Portland cement plants.

(e) Primary zinc smelters.

(f) Iron and steel mill plants.

(g) Primary aluminum ore reduction plants.

(h) Primary copper smelters.

(i) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(j) Hydrofluoric acid plants.

(k) Sulfuric acid plants.

(l) Nitric acid plants.

(m) Petroleum refineries.

(n) Lime plants.

(o) Phosphate rock processing plants.

(p) Coke oven batteries.

(q) Sulfur recovery plants.

(r) Carbon black plants (furnace process).

(s) Primary lead smelters.

(t) Fuel conversion plants.

(u) Sintering plants.

(v) Secondary metal production plants.

(w) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(x) Fossil fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(z) Taconite ore processing plants.

(aa) Glass fiber processing plants.

(bb) Charcoal production plants.

(2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds or NO_x shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plants.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category that, as of August 7, 1980, is being regulated under 40 CFR Parts 60 and 61.

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

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation)

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.

"Necessary preconstruction approvals or permits" means those permits required under NSR programs that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-1605 G; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(1) The date five years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if (i) 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; and (ii) the board has not relied on it in issuing a permit for the source under this article (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

h. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"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 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 this part.

"Plantwide applicability limitation (PAL)" means an emission 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.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

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

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"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 if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, 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 the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner of the major stationary source:

a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved implementation plan;

b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

a. Has not been in operation for the two-year period prior to the enactment of the federal Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;

b. Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

c. Is equipped with low-NOX burners prior to the time of commencement of operations following reactivation; and

d. Is otherwise in compliance with the requirements of the federal Clean Air Act.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means:

a. Any pollutant for which an ambient air quality standard has been promulgated and any pollutant identified under this subdivision as a constituent or precursor to such pollutant. This includes, but is not limited to, the following:

(1) $PM_{2.5}$ emissions and PM_{10} 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 PM_{10} issued under this article. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} 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 article.

(2) Any pollutant identified under this subdivision as a constituent or precursor to a pollutant for which an ambient air quality standard has been promulgated. Precursors identified for the purposes of this article shall be the following:

(1) (a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(2) (b) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(3) (c) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable 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.

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

b. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act.

c. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act.

d. Particulate matter emissions, $PM_{2.5}$ emissions, and PM_{10} 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 particulate matter, $PM_{2.5}$ and PM_{10} in permits issued under this article. Compliance with emissions limitations for particulate matter, $PM_{2.5}$ and PM_{10} 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 article.

e. d. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act; except that any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act or added to the list pursuant to § 112(b)(2), which have not been delisted pursuant to § 112(b)(3), are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Repowering" means:

a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

c. The board may give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under § 409 of the federal Clean Air Act.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions 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. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM_{10}	15 tpy

$PM_{2.5}$	10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of SO_2 emissions; 40 tpy of NO_X emissions unless demonstrated not to be a $PM_{2.5}$ precursor under the definition of "regulated NSR pollutant"
Ozone	40 tpy of volatile organic compounds or NO_X
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H_2S)	10 tpy
Total Reduced Sulfur (including H_2S)	10 tpy
Reduced Sulfur Compounds (including H_2S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	40 tpy
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	50 tpy

b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is significant for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions 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 that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

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9 VAC 5-80-1625. General.

A. No owner or other person shall begin actual construction of any new major stationary source or major modification without first obtaining from the board a permit to construct and operate such source. The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.

B. The requirements of this article apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this article otherwise provides.

C. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining a permit from the board to relocate the unit.

D. Prior to the decision of the board, all permit applications will be subject to a public comment period, a public hearing will be held as provided in 9 VAC 5-80-1775.

E. The board will take actions to combine permit terms and conditions as provided in 9VAC5-80-1915. 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 9VAC5-80-1925 as explained in subsection F of this section.

F. The board will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1925. 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 E of this section.

G. All terms and conditions of any 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 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 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of 9VAC5-50 (New and Modified Stationary Sources), Article 4 (9VAC5-60-200 et seq.) of 9VAC5-60 (Hazardous Air Pollutant Sources), or Article 5 (9VAC5-60-300) of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any 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 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.

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

9 VAC 5-80-1635. Ambient air increments.

In areas designated as class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

	Class I
$PM_{2.5}$:	
Annual arithmetic mean	1
24 hour maximum	2
PM_{10}:	
Annual arithmetic mean	4
24 hour maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24 hour maximum	5
Three-hour maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5

	Class II
$PM_{2.5}$:	
Annual arithmetic mean	4
24 hour maximum	9
PM_{10}:	
Annual arithmetic mean	17
24 hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20

24 hour maximum	91
Three-hour maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25

Class III

$PM_{2.5}$:	
Annual arithmetic mean	8
24 hour maximum	18
PM_{10}:	
Annual arithmetic mean	34
24 hour maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24 hour maximum	182
Three-hour maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

9 VAC 5-80-1645. Ambient air ceilings.

No concentration of a pollutant shall exceed:

A. The concentration permitted under the secondary ambient air quality standard, or

B. The concentration permitted under the primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

9 VAC 5-80-1655. Applications.

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures 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. For projects with phased development, a single application may be submitted covering the entire project.

C. Any application form, report, or certification submitted to the board shall comply with the provisions of 9 VAC 5-20-230.

9 VAC 5-80-1665. Compliance with local zoning requirements.

No provision of this part or any permit issued thereunder shall relieve an owner of 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 5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9 VAC 5-80-1675. Compliance determination and verification by performance testing.

A. Compliance with standards of performance shall be determined in accordance with the provisions of 9 VAC 5-50-20 and shall be verified by performance tests in accordance with the provisions of 9 VAC 5-50-30.

B. Testing required by this section shall be conducted within 60 days by the owner 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 or, upon request, more copies of a written report of the results of the tests.

C. The requirements 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.

D. The provisions for the granting of waivers under subsection C 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.

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

9 VAC 5-80-1685. Stack heights.

A. The provisions of 9 VAC 5-50-20 H apply.

B. Prior to issuing a permit with a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by subdivision 1 or 2 of the GEP definition in 9 VAC 5-10-20, the board will notify the public of the availability of the demonstration study specified in subdivision 3 of the GEP definition and will provide opportunity for public hearing on it using the procedures set forth in 9 VAC 5-80-1775.

9VAC5-80-1695. **Exemptions.**

A. The requirements of this article shall not apply to a particular major stationary source or major modification; if:

1. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

a. Coal cleaning plants (with thermal dryers).

b. Kraft pulp mills.

c. Portland cement plants.

d. Primary zinc smelters.

e. Iron and steel mills.

f. Primary aluminum ore reduction plants.

g. Primary copper smelters.

h. Municipal incinerators capable of charging more than 250 tons of refuse per day.

i. Hydrofluoric acid plants.

j. Sulfuric acid plants.

k. Nitric acid plants.

l. Petroleum refineries.

m. Lime plants.

n. Phosphate rock processing plants.

o. Coke oven batteries.

p. Sulfur recovery plants.

q. Carbon black plants (furnace process).

r. Primary lead smelters.

s. Fuel conversion plants.

t. Sintering plants.

u. Secondary metal production plants.

v. Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

w. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

y. Taconite ore processing plants.

z. Glass fiber processing plants.

aa. Charcoal production plants.

bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

cc. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60 or 61; or

2. The source or modification is a portable stationary source that has previously received a permit under this article, and

a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would affect no class I area and no area where an applicable increment is known to be violated; and

d. 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 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

B. The requirements of this article shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

C. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would affect no class I area and no area where an applicable increment is known to be violated; and

2. Would be temporary.

D. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E. The board may exempt a proposed major stationary source or major modification from the requirements of 9VAC5-80-1735 with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide -- 575 $\mu g/m^3$, 8-hour average

Nitrogen dioxide -- 14 $\mu g/m^3$, annual average

$PM_{2.5}$ - 4 0 $\mu g/m^3$, 24-hour average*

PM_{10} - 10 $\mu g/m^3$, 24-hour average

Sulfur dioxide -- 13 $\mu g/m^3$, 24-hour average

Ozone**

Lead -- 0.1 $\mu g/m^3$, 3-month average

Fluorides -- 0.25 $\mu g/m^3$, 24-hour average

Total reduced sulfur -- 10 $\mu g/m^3$, 1-hour average

Hydrogen sulfide -- 0.2 $\mu g/m^3$, 1-hour average

Reduced sulfur compounds -- 10 $\mu g/m^3$, 1-hour average; or

*No exemption is available with regard to $PM_{2.5}$.

*No **No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or NO_x subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision 1 of this subsection, or the pollutant is not listed in subdivision 1 of this subsection.

F. The requirements of this article shall not apply to a particular major stationary source with respect to the use 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 major modification.

review under this article as may...

9 VAC 5-80-1705. Control technology review.

A. A major stationary source or major modification shall meet each applicable emissions limitation under the implementation plan and each applicable emissions standard and standard of performance under 40 CFR Parts 60, 61, and 63.

B. A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

C. A major modification shall apply best available control technology for each regulated NSR pollutant for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

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

9 VAC 5-80-1715. Air quality impact ...

9VAC5-80-1715. **Source impact analysis.**

A. The following demonstration is required for any new major stationary source or major modification:

1. A. The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

a. 1. Any ambient air quality standard in any air quality control region; or

b. 2. Any applicable maximum allowable increase over the baseline concentration in any area.

2. For purposes of $PM_{2.5}$, the demonstration required in subdivision 1 of this subsection is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following amounts:

Averaging time	Class I area	Class II area	Class III area
Annual	0.06 $\mu g/m^3$	0.3 $\mu g/m^3$	0.3 $\mu g/m^3$
24-hour	0.07 $\mu g/m^3$	1.2 $\mu g/m^3$	1.2 $\mu g/m^3$

B. The following applies to any new major stationary source or major modification if it would cause or contribute to a violation of any ambient air quality standard.

1. A new major stationary source or major modification will be considered to cause or contribute to a violation of an ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable air quality standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO_2	1.0 $\mu g/m^3$	5.0 $\mu g/m^3$		25.0 $\mu g/m^3$	
PM_{10}	1.0 $\mu g/m^3$	5.0 $\mu g/m^3$			
$PM_{2.5}$	0.3 mg/m^3	1.2 mg/m^3			
NO_2	1.0 $\mu g/m^3$				
CO			500 $\mu g/m^3$		2000 $\mu g/m^3$

2. A proposed new major stationary source or major modification may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the new major stationary source or major modification would otherwise cause or contribute to a violation of any ambient air quality standard. In the absence of such emission reductions, the board will deny the proposed construction.

3. The requirements of this subsection do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

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9 VAC 5-80-1725. Air quality models.

A. All applications of air quality modeling involved in this article shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W to 40 CFR Part 51.

B. Where an air quality impact model specified in Appendix W to 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator shall be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to notice and opportunity for public comment under procedures developed in accordance with 9 VAC 5-80-1775.

9 VAC 5-80-1735. Air quality analysis.

A. Preapplication analysis shall be conducted as follows.

1. Any application for a permit under this article shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

a. For the source, each pollutant that it would have the potential to emit in a significant amount;

b. For the modification, each pollutant for which it would result in a significant net emissions increase.

2. With respect to any such pollutant for which no ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the board determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the board determines that a

complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

5. The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of § IV of Appendix S to 40 CFR Part 51 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

B. The owner of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the board determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

C. The owner of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying this section.

9 VAC 5-80-1745. Source information.

The owner of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this article.

A. With respect to a source or modification to which 9 VAC 5-80-1705, 9 VAC 5-80-1715, 9 VAC 5-80-1735, and 9 VAC 5-80-1755 apply, such information shall include:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

2. A detailed schedule for construction of the source or modification;

3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

B. Upon request of the board, the owner shall also provide information on:

1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

2. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth that has occurred since the baseline

date in the area the source or modification would affect.

9 VAC 5-80-1755. Additional impact analyses.

A. The owner shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

B. The owner shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

C. The board may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the board deems necessary and appropriate.

9 VAC 5-80-1765. Sources affecting federal class I areas - additional requirements.

A. The board shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of the following actions related to the consideration of such permit:

1. Notification of the permit application status as provided in 9 VAC 5-80-1775 A.

2. Notification of the public comment period on the application as provided in 9 VAC 5-80-1775 F 5.

3. Notification of the final determination on the application and issuance of the permit as provided in 9 VAC 5-80-1775 F 9.

4. Notification of any other action deemed appropriate by the board.

B. The board shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The board shall also provide the federal land manager and such federal officials with a copy of the

preliminary determination required under 9 VAC 5-80-1775 F, and shall make available to them any materials used in making that determination, promptly after the board makes such determination. Finally, the board shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

C. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the board, whether a proposed source or modification will have an adverse impact on such values.

D. The board shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subsection B of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the board finds that such an analysis does not demonstrate to the satisfaction of the board that an adverse impact on visibility will result in the federal class I area, the board shall, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.

E. The federal land manager of any such lands may demonstrate to the board that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the board concurs with such demonstration, then it shall not issue the permit.

F. The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and so certifies, the board may, provided that the applicable requirements of this article are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, $PM_{2.5}$, PM_{10}, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

$PM_{2.5}$:	
Annual arithmetic mean	4
24 hour maximum	9
PM_{10}:	
Annual arithmetic mean	17
24 hour maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24 hour maximum	91
Three-hour maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

G. The owner of a proposed source or modification that cannot be approved under subsection F of this section may demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the board shall issue a permit to such source or modification pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

H. In any case whether the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the board shall issue a permit pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

I. In the case of a permit issued pursuant to subsection G or H of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for

more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE
(micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

9 VAC 5-80-1775. Public participation.

A. 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 shall be, for the purpose of this article, the date on which the board received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. No later than 30 days after receiving the initial determination notification required under subsection A of this section, the applicant shall notify the public about the proposed source as required in subsection C of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection D of this section.

C. The public notice required under subsection B 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 name, location, and type of the source, and the time and place of the informational briefing.

D. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant

estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the board will attend and provide information and answer questions on the permit application review process.

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

F. Within one year after receipt of a complete application, the board will make a final determination on the application. This involves performing the following actions in a timely manner:

1. Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

2. Make available in at least one location in each air quality control region in which the proposed source or modification would be constructed a copy of all materials the applicant submitted a copy of the preliminary determination and a copy or summary of other materials, if any, considered in making the preliminary determination.

3. If appropriate, hold a public briefing on the preliminary determination prior to the public comment period but no later than the day before the beginning of the public comment period. The board will notify the public of the time and place of the briefing, by advertisement in a newspaper of general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification will be published at least 30 days prior to the day of the briefing.

4. Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification will contain a statement of the estimated local impact of the proposed source or modification, which at a minimum will provide information regarding specific pollutants and the total quantity of each which may be emitted, and will list the type and quantity of any fuels to be used. The notification will be published at least 30 days prior to the day of the hearing. Written comments will be accepted by the board for at least 15 days after any hearing, unless the board votes to shorten the period. 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.

5. Send a copy of the notice of public comment to the applicant, the administrator and to officials and agencies having cognizance over the location where the

proposed construction would occur as follows: local air pollution control agencies, the chief elected official and chief administrative officer of the city and county where the source or modification would be located and any other locality particularly affected, the planning district commission, and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

6. Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

7. Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The board will consider the applicant's response in making a final decision. The board will make all comments available for public inspection in the same locations where the board made available preconstruction information relating to the proposed source or modification.

8. Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this article.

9. Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the board made available preconstruction information and public comments relating to the source or modification.

G. In order to facilitate the efficient issuance of permits under Articles 1 (9 VAC 5-80-50 et seq.) and 3 (9 VAC 5-80-360 et seq.) of this part, upon request of the applicant the board will process the permit application under this article using public participation procedures meeting the requirements of this section and 9 VAC 5-80-270 or 9 VAC 5-80-670, as applicable.

9 VAC 5-80-1785. Source obligation.

A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article 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 9 VAC 5-80-1985.

B. The provisions of this subsection apply to projects at an existing emissions unit

at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner elects to use the method specified in subdivisions a through c of the definition of "projected actual emissions" for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner shall document and maintain a record of the following information:

a. A description of the project;

b. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subdivision c of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. If the emissions unit is an existing electric utility steam generating unit, no less than 30 days before beginning actual construction, the owner shall provide a copy of the information set out in subdivision 1 of this subsection to the board. Nothing in this subdivision shall be construed to require the owner of such a unit to obtain any determination from the board before beginning actual construction.

3. The owner shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subdivision 1 b of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner shall submit a report to the board within 60 days after the end of each calendar year during which records must be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the calendar year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner shall submit a report to the board if the annual emissions, in tons per year, from the project identified in subdivision 1 of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to subdivision 1 c of this

subsection), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision 1 c of this subsection. Such report shall be submitted to the board within 60 days after the end of such calendar year. The report shall contain the following:

a. The name, address and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to subdivision 3 of this subsection; and

c. Any other information that the owner wishes to include in the report (for example, an explanation as to why the emissions differ from the preconstruction projection).

C. The owner of the source shall make the information required to be documented and maintained pursuant to subsection B of this section available for review upon a request for inspection by the board or the general public pursuant to the requirements contained in 9 VAC 5-170-60.

D. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

E. For each project subject to subsection B of this section, the owner shall provide notice of the availability of the information set out in subdivision B 1 of this section to the board no less than 30 days before beginning actual construction. The notice shall include the location of the information and the name, address and telephone number of the contact from whom the information may be obtained. Should subsequent information become available to the board to indicate that a given project subject to subsection B is a part of a major modification that resulted in a significant emissions increase, the board will proceed as if the owner is in violation of 9 VAC 5-80-1625 A and may institute appropriate enforcement action as provided in subsection A of this section. Nothing in this subsection shall be construed to require the owner of the source to obtain any determination from the board before beginning actual construction.

9 VAC 5-80-1795. Environmental impact statements.

Whenever any proposed source or modification is subject to action by a federal agency that might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 USC 4321), review conducted pursuant to this article shall be coordinated by the administrator with the broad environmental reviews under that Act and under § 309 of the federal Clean Air Act to the maximum extent

feasible and reasonable.

9 VAC 5-80-1805. Disputed permits.

If a permit is proposed to be issued for any major stationary source or major modification proposed for construction in any state which the governor of an affected state or Indian governing body of an affected tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected state or Indian reservation, the governor or Indian governing body may request the administrator to enter into negotiations with the persons involved to resolve such dispute. If requested by any state or Indian governing body involved, the administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the persons involved do not reach agreement, the administrator shall resolve the dispute. The administrator's determination, or the results of agreements reached through other means, shall become part of the applicable implementation plan and shall be enforceable as part of such plan.

9 VAC 5-80-1815. Interstate pollution abatement.

A. The owner of each source or modification, which may significantly contribute to levels of air pollution in excess of an ambient air quality standard in any air quality control region outside the Commonwealth, shall provide written notice to all nearby states of the air pollution levels that may be affected by such source at least 60 days prior to the date of commencement of construction.

B. Any state or political subdivision may petition the administrator for a finding that any source or modification emits or would emit any air pollutant in amounts that will prevent attainment or maintenance of any ambient air quality standard or interfere with measures for the prevention of significant deterioration or the protection of visibility in the implementation plan for such state. Within 60 days after receipt of such petition and after a public hearing, the administrator will make such a finding or deny the petition.

C. Notwithstanding any permit granted pursuant to this article, no owner or other person shall commence construction or modification or begin operation of a source to which a finding has been made under the provisions of subsection B of this section.

9 VAC 5-80-1825. Innovative control technology.

A. Prior to the close of the public comment period under 9 VAC 5-80-1775, an owner of a proposed major stationary source or major modification may request, in writing, that the board approve a system of innovative control technology.

B. The board, with the consent of the governor(s) of affected state(s), will determine that the source or modification may employ a system of innovative control

technology, if:

1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

2. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under 9 VAC 5-80-1705B by a date specified by the board. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

3. The source or modification would meet the requirements of 9 VAC 5-80-1705 and 9 VAC 5-80-1715 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the board;

4. The source or modification would not, before the date specified by the board:

a. Cause or contribute to a violation of an applicable ~~national~~ ambient air quality standard; or

b. Affect any area where an applicable increment is known to be violated;

5. All other applicable requirements including those for public participation have been met; and

6. The provisions of 9 VAC 5-80-1765 (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

C. The board will withdraw any approval to employ a system of innovative control technology made under this article, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

3. The board decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

D. If a source or modification fails to meet the requirement level of continuous emission reduction within the specified time period or the approval is withdrawn in

accordance with subsection C of this section, the board may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

9 VAC 5-80-1835. Reserved.

9 VAC 5-80-1845. Reserved.

9 VAC 5-80-1855. Reserved.

9 VAC 5-80-1865. Actuals plantwide applicability limits (PAL).

A. The board may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

1. Any physical change in or change in the method of operation of a major stationary source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

a. Is not a major modification for the PAL pollutant;

b. Does not have to be approved through this article; and

c. Is not subject to the provisions in 9 VAC 5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

2. Except as provided under subdivision 1 c of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source shall submit the following information to the board for approval:

1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and

malfunction.

3. The calculation procedures that the major stationary source owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

C. The general requirements set forth in this subsection shall apply to the establishment of PALs.

1. The board may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:

a. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

b. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

c. The PAL permit shall contain all the requirements of subsection F of this section.

d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

e. Each PAL shall regulate emissions of only one pollutant.

f. Each PAL shall have a PAL effective period of five years.

g. The owner of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections M through O of this section for each emissions unit under the PAL through the PAL effective period.

2. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as

decreases for purposes of offsets under 9 VAC 5-80-2120 F through N unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

D. PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures prescribed in the applicable permit programs identified in the definition of PAL permit. In no case may the board issue a PAL permit unless the board provides the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The board will address all material comments before taking final action on the permit.

E. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant (as reflected in the definition of "significant") level for the PAL pollutant. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. The same consecutive 24-month period shall be used for each different PAL pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances. Emissions associated with units that were permanently shutdown after this 24-month period shall be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period shall be added to the PAL level in an amount equal to the potential to emit of the units. The board will specify a reduced PAL level or levels (in tons per year) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirements that the board is aware of prior to issuance of the PAL permit. For instance, if the source owner will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if a major stationary source owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the board, or until

the board determines that the revised PAL permit will not be issued.

4. A requirement that emission calculations for compliance purposes shall include emissions from startups, shutdowns, and malfunctions.

5. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection I of this section.

6. The calculation procedures that the major stationary source owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision N 1 of this section.

7. A requirement that the major stationary source owner monitor all emissions units in accordance with the provisions under subsection M of this section.

8. A requirement to retain the records required under subsection N of this section on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subsection O of this section by the required deadlines.

10. Any other requirements that the board deems necessary to implement and enforce the PAL.

G. The PAL effective period shall be five years.

H. The requirements for the reopening of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. During the PAL effective period, the board will reopen the PAL permit to:

a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

b. Reduce the PAL if the owner of the major stationary source creates creditable emissions reductions for use as offsets under 9 VAC 5-80-2120 F through N; and

c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.

2. The board may reopen the PAL permit for any of the following reasons:

a. Reduce the PAL to reflect newly applicable federal requirements

(e.g., NSPS) with compliance dates after the PAL effective date.

b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the board may impose on the major stationary source.

c. Reduce the PAL if the board determines that a reduction is necessary to avoid causing or contributing to a violation of an ambient air standard or ambient air increment in 9 VAC 5-80-1635, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL that is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the time frame specified for PAL renewals in subdivision J 2 of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the board) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision J 5 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The board will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the board determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The board may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the board issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the major stationary source will be subject to major NSR program requirements if such change meets the definition of "major modification."

5. The major stationary source owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, or NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9 VAC 5-80-1605 C, but were eliminated by the PAL in accordance with the provisions in subdivision A 1 c of this section.

J. The requirements for the renewal of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The board will follow the procedures specified in subsection D of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the board.

2. A major stationary source owner shall submit a timely application to the board to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued, or until the board determines that the revised permit with the renewed PAL will not be issued, and a permit is issued pursuant to subsection I of this section.

3. The application to renew a PAL permit shall contain the following information:

a. The information required in subsection B of this section.

b. A proposed PAL level.

c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

d. Any other information the owner wishes the board to consider in determining the appropriate level for renewing the PAL.

K. The requirements for the adjustment of the PAL set forth in this subsection shall apply to actuals PALs. In determining whether and how to adjust the PAL, the board will consider the options outlined in subdivisions 1 and 2 of this subsection. However, in no case may any such adjustment fail to comply with subdivision 3 of this subdivision.

1. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the board may renew the PAL at the same level without considering the factors set forth in subdivision 2 of this subsection; or

2. The board may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the board in a written rationale.

3. Notwithstanding subdivisions 1 and 2 of this subsection:

a. If the potential to emit of the major stationary source is less than the PAL, the board will adjust the PAL to a level no greater than the potential to emit of the source; and

b. The board will not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection L of this section.

4. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the board has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

L. The requirements for increasing a PAL during the PAL effective period set forth in this subsection shall apply to actuals PALs.

1. The board may increase a PAL emission limitation only if the owner of the major stationary source complies with the following provisions:

a. The owner of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such

application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

b. As part of this application, the major stationary source owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding five years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 of this subsection, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the major NSR program process (e.g., BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The board will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

M. The requirements for monitoring the PAL set forth in this subsection apply to actuals PALs.

1. The general requirements for monitoring a PAL set forth in this subdivision apply to actuals PALs.

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL

permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subdivision and must be approved by the board.

c. Notwithstanding subdivision 1 b of this subdivision, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subdivision if approved by the board.

d. Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

2. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 3 through 9 of this subsection:

a. Mass balance calculations for activities using coatings or solvents;

b. CEMS;

c. CPMS or PEMS; and

d. Emission factors.

3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the board determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. CEMS shall comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

b. CEMS shall sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the board, while the emissions unit is operating.

6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the board determines that testing is not required.

7. A source owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subdivision, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the board will, at the time of permit issuance:

a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the board. Such testing shall occur at least once every five years after issuance of the PAL.

N. The requirements for recordkeeping in the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The PAL permit shall require an owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require an owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

a. A copy of the PAL permit application and any applications for revisions to the PAL; and

b. Each annual certification of compliance pursuant to the federal operating permit and the data relied on in certifying the compliance.

O. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the board in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the board within 30 days of the end of each reporting period. This report shall contain the following information:

a. The identification of owner and operator and the permit number.

b. Total annual emissions (tons per year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision N 1 of this section.

c. All data relied upon, including, but not limited to, any quality

assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

d. A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision M 7 of this section.

g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The major stationary source owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9 VAC 5-80-110 F 2 B shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9 VAC 5-80-110 F 2 B. The reports shall contain the following information:

a. The identification of owner and operator and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official (as defined by the applicable federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the board the results of any revalidation test or method within 3 months after completion of such test or method.

P. The board will not issue a PAL that does not comply with the requirements of this section after September 1, 2006. The board may supersede any PAL that was established prior to September 1, 2006 with a PAL that complies with the requirements of

this section.

9VAC5-80-1915. 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 which 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.

d. To take an action to issue a permit or change a permit for any physical change in or change in the method of operation of a major stationary source that is subject to the provisions in 9VAC5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

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.

9 VAC 5-80-1925. Actions to change permits.

A. The general requirements for actions to make changes to permits issued under this article are as follows:

1. Except as provided in subdivision 3 of this subsection, changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9 VAC 5-80-1935 through 9 VAC 5-80-1965.

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

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part shall be made as specified in Article 1 (9 VAC 5-80-50 et seq.) or Article 3 (9 VAC 5-80-360 et seq.) of this part.

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

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit changes can be found in 9 VAC 5-80-1935 through 9 VAC 5-80-1955.

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

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9 VAC 5-80-1965.

9 VAC 5-80-1935. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9 VAC 5-80-2170 have been fulfilled.

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 9 VAC 5-80-1775. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

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

9 VAC 5-80-1945. 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 record keeping 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 record keeping requirements~~;~~.

3. Do not require or change a case-by-case determination of an emissions limitation or other requirement.

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

5. Are not required to be processed as a significant amendment under 9 VAC 5-80-1955; or as an administrative permit amendment under 9 VAC 5-80-1935.

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.

3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-1625 G 1 as state-only enforceable as provided in 9 VAC 5-80-1625 G 2 for any permit issued under this article or any regulation from which this article is derived.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. In order for the underlying statutory or regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR 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~~.~~, along with 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 9 VAC 5-80-1775 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 permit 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 the owner seeks to modify if the applicant has submitted a proposed permit amendment. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

9 VAC 5-80-1955. 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 9 VAC 5-80-1945 or as administrative amendments under 9 VAC 5-80-1935.

2. Significant amendment procedures shall be used for those permit amendments that meet any 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 emissions limitation or other requirement.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

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

C. The provisions of 9 VAC 5-80-1775 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a permit amendment is normally 180 days following receipt of a complete application. The board may extend this time period if additional information is required or if a public hearing is conducted under 9VAC5-80-1775.

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.

9 VAC 5-80-1965. Reopening for cause.

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

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

B. Proceedings to reopen and reissue a permit shall follow the same procedures

as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

9 VAC 5-80-1930. Repealed.

9 VAC 5-80-1975. Transfer of permits.

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities that are exempt from the provisions of this article by 9 VAC 5-80-1695 A 2.

9 VAC 5-80-1985. Permit invalidation, suspension, revocation, and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction or modification is not commenced 18 months from the date the permit is granted.

B. A permit granted pursuant to this article shall become invalid if a program of construction or modification is discontinued for a period of 18 months or more or if a program of construction 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 phased construction project; each phase shall commence construction within 18 months of the projected and approved commencement date.

C. The board may extend the periods prescribed in subsections A and B of this section upon 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 9 VAC 5-80-1945.

D. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article, or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article 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 section.

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

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

1. Knowingly makes material misstatements in the permit application or any amendments thereto;

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 that 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 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. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation contained in subsection B of this section or for any other violations of the regulations of the board.

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

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in 9 VAC 5 Chapter 20 (9 VAC 5-20) and the Virginia Air Pollution Control Law.

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

9 VAC 5-80-1960. Repealed.

9 VAC 5-80-1970. Repealed.

9 VAC 5-80-1995. Existence of permit no defense.

The existence of a permit under this article shall not constitute a defense to a violation of the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia) 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.