

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

9VAC5 CHAPTER 45  
CONSUMER AND COMMERCIAL PRODUCTS

Part II  
Emission Standards

Article 1  
Emission Standards for Portable Fuel Containers and Spouts Manufactured before  
August 1, 2010

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9VAC5-45-60. Applicability.

A. Except as provided in 9VAC5-45-70, the provisions of this article apply to any portable fuel container or spout manufactured before August 1, 2010. The provisions of Article 2 (9VAC5-45-160 et seq.) of this part apply to portable fuel containers and spouts manufactured on or after August 1, 2010.

B. Except as provided in 9VAC5-45-70, the provisions of this article apply to any owner or other person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts.

C. The provisions of this article apply only to owners and other persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9VAC5-20-206.

9VAC5-45-70. Exemptions.

A. The provisions of this article do not apply to any portable fuel container or spout manufactured for shipment, sale, and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-60.

B. The provisions of this article do not apply to a manufacturer or distributor who sells, supplies, or offers for sale a portable fuel container or spout that does not comply with the emission standards specified in 9VAC5-45-90, as long as the manufacturer or distributor can demonstrate that: (i) the portable fuel container or spout is intended for shipment and use outside of the applicable volatile organic compound emissions control areas designated in 9VAC5-45-60 C; and (ii) the manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout is not distributed within the applicable volatile organic compound emissions control areas designated in 9VAC5-45-60 C. This subsection does not apply to portable fuel containers or spouts that are sold, supplied, or offered for sale to retail outlets.

C. The provisions of this article do not apply to safety cans meeting the requirements of 29 CFR Part 1926 Subpart F.

D. The provisions of this article do not apply to portable fuel containers with a nominal capacity less than or equal to one quart.

E. The provisions of this article do not apply to rapid refueling devices with nominal capacities greater than or equal to four gallons, provided (i) such devices are designed for use in officially sanctioned off-highway motor sports such as car racing or motorcycle competitions, and (ii) such devices either create a leak-proof seal against a stock target fuel tank, or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.

F. The provisions of this article do not apply to portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and the outboard engine for the purpose of operating the outboard engine.

G. The provisions of this article do not apply to closed-system portable fuel containers that are used exclusively for fueling remote control model airplanes.

H. For purposes of this article, the terms "supply" or "supplied" do not include internal transactions within a business or governmental entity. These terms only apply to transactions between manufacturers/commercial distributors that sell, or otherwise provide, products to businesses/governmental entities/individuals.

#### 9VAC5-45-80. Definitions.

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

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

C. Terms defined.

"ASTM" means the American Society for Testing and Materials.

"CARB" means California Air Resources Board.

"Consumer" means any person who purchases or otherwise acquires a new portable fuel container or spout for personal, family, household, or institutional use. Persons acquiring a portable fuel container or spout for resale are not "consumers" for that product.

"Distributor" means any person to whom a portable fuel container or spout is sold or supplied for the purpose of resale or distribution in commerce. This term does not include manufacturers, retailers, and consumers.

"Fuel" means all motor fuels subject to any provision of Chapter 12 (§ 59.1-149 et seq.) of Title 59.1 of the Code of Virginia, excluding liquefied petroleum gas, compressed natural gas, and hydrogen. This term includes, but is not limited to, gasoline, diesel fuel, and gasoline-alcohol blends.

"Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or re-labels a portable fuel container or spout.

"Nominal capacity" means the volume indicated by the manufacturer that represents the maximum recommended filling level.

"Outboard engine" means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the position to operate, houses the engine and drive unit external to the hull of the marine watercraft.

"Permeation" means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

"Portable fuel container" means any container or vessel with a nominal capacity of 10 gallons or less intended for reuse that is designed, used, sold, advertised for sale, or offered for sale for receiving, transporting, storing, and dispensing fuel. Portable fuel containers do not include containers or vessels permanently embossed or permanently labeled as described in 49 CFR 172.407(a) with language indicating that the containers or vessels are solely intended for use with nonfuel products.

"Retail outlet" means any establishment at which portable fuel containers or spouts are sold, supplied, or offered for sale.

"Retailer" means any person who owns, leases, operates, controls, or supervises a retail outlet.

"Spill-proof spout" means any spout that complies with the standards specified in 9VAC5-45-90 B and the administrative requirements in 9VAC5-45-100.

"Spill-proof system" means any configuration of portable fuel container and firmly attached spout that complies with the standards in 9VAC5-45-90 A and the administrative requirements in 9VAC5-45-100.

"Spout" means any device that can be firmly attached to a portable fuel container and through which the contents of the container may be poured. A spout does not include a device that can be used to lengthen the spout to accommodate necessary applications.

"Target fuel tank" means any receptacle that receives fuel from a portable fuel container.

9VAC5-45-90. Standard for volatile organic compounds.

A. No owner or other person shall sell, supply, offer for sale, or manufacture for sale any portable fuel container after the compliance dates specified in 9VAC5-45-120 A unless that portable fuel container meets all of the following standards for spill-proof systems:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.
2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.
3. Has only one opening for both filling and pouring.
4. Does not exceed a permeation rate of 0.4 grams per gallon per day.
5. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

B. No owner or other person shall sell, supply, offer for sale, or manufacture for sale any spout after the compliance dates specified in 9VAC5-45-120 unless that spout meets all of the following standards for spill-proof spouts:

1. Has an automatic shut-off that stops the fuel flow before the target fuel tank overflows.
2. Automatically closes and seals when removed from the target fuel tank and remains completely closed when not dispensing fuel.

3. Is warranted by the manufacturer for a period of not less than one year against defects in materials and workmanship.

C. The test procedures for determining compliance with the standards in this section are set forth in 9VAC5-45-130. The manufacturer of portable fuel containers or spouts shall perform the tests for determining compliance as set forth in 9VAC5-45-130 to show that its product meets the standards of this section prior to allowing the product to be offered for sale. The manufacturer shall maintain records of these compliance tests for as long as the product is available for sale and shall make those test results available within 60 days of request.

D. Compliance with the standards in this section does not exempt spill-proof systems or spill-proof spouts from compliance with other applicable federal and state statutes and regulations such as state fire codes, safety codes, and other safety regulations, nor will the board test for or determine compliance with such other statutes or regulations.

E. The following provisions apply to sell through of portable fuel containers and spouts manufactured before August 1, 2010:

1. Notwithstanding the provisions of subsections A and B of this section, a portable fuel container or spout manufactured before the applicable compliance date specified in 9VAC5-45-120 A, may be sold, supplied, or offered for sale after the applicable compliance date, if the date of manufacture or a date code representing the date of manufacture is clearly displayed on the portable fuel container or spout.

2. Notwithstanding the provisions of subsections A and B of this section, a portable fuel container or spout manufactured after the applicable compliance date specified in 9VAC5-45-120 A and before August 1, 2010 may be sold, supplied, or offered for sale on or after August 1, 2010, if it complies with all of the provisions of Article 2 (9VAC5-45-160 et seq.) of this part.

3. Except as provided in subdivisions 1 and 2 of this subsection, displaying the date of manufacture, or a code indicating the date of manufacture, on the product container or package does not exempt the owner or product from the provisions of this article.

9VAC5-45-100. Administrative requirements.

A. Each manufacturer of a portable fuel container subject to and complying with 9VAC5-45-90 A shall clearly display on each spill-proof system:

1. The phrase "Spill-Proof System";
2. A date of manufacture or representative date code; and

3. A representative code identifying the portable fuel container as subject to and complying with 9VAC5-45-90 A.

B. Each manufacturer of a spout subject to and complying with 9VAC5-45-90 B shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:

1. The phrase "Spill-Proof Spout";
2. A date of manufacture or representative date code; and

3. A representative code identifying the spout as subject to and complying with 9VAC5-45-90 B.

C. Each manufacturer subject to subsection A or B shall file an explanation of both the date code and representative code with the board no later than the later of three months after the effective date of this article or within three months of production, and within three months after any change in coding.

D. Each manufacturer of a spout subject to subsection B of this section shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate and for which the manufacturer can demonstrate the container's compliance with 9VAC5-45-90 on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

E. Manufacturers of portable fuel containers not subject to or not in compliance with 9VAC5-45-90 may not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout or on any sticker or label affixed thereto or on any accompanying package.

F. Each manufacturer of a portable fuel container or spout subject to and complying with 9VAC5-45-90 that due to its design or other features cannot be used to refuel on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater on each of the following:

1. For a portable fuel container sold as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and
2. For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

9VAC5-45-110. Compliance.

The provisions of subsections B, D, F, and G of 9VAC5-45-20 (Compliance) apply. The other provisions of 9VAC5-45-20 do not apply.

9VAC5-45-120. Compliance schedules.

A. Affected persons shall comply with the provisions of this article as expeditiously as possible but in no case later than:

1. January 1, 2005, in the Northern Virginia VOC Emissions Control Area;  
or

2. January 1, 2008, in the Fredericksburg VOC Emissions Control Area.

B. Any owner or other person who cannot comply with the provisions of this article by the date specified in subsection A of this section, due to extraordinary reasons beyond that person's reasonable control, may apply in writing to the board for a waiver. The waiver application shall set forth:

1. The specific grounds upon which the waiver is sought, including the facts that support the extraordinary reasons that compliance is beyond the applicant's reasonable control;

2. The proposed date by which compliance with the provisions of this article will be achieved; and

3. A compliance report detailing the methods by which compliance will be achieved.

C. No waiver may be granted unless all of the following findings are made:

1. That, due to reasons beyond the reasonable control of the applicant, required compliance with this article would result in extraordinary economic hardship;

2. That the public interest in mitigating the extraordinary hardship to the applicant by issuing the waiver outweighs the public interest in avoiding any increased emissions of air contaminants that would result from issuing the waiver; and

3. That the compliance report proposed by the applicant can reasonably be implemented and shall achieve compliance as expeditiously as possible.

D. Any approval of a waiver shall specify a final compliance date by which compliance with the requirements of this article shall be achieved. Any approval of a waiver shall contain a condition that specifies the increments of progress necessary to assure timely compliance and such other conditions that the board finds necessary to carry out the purposes of this article.

E. A waiver shall cease to be effective upon the failure of the party to whom the waiver was granted to comply with any term or condition of the waiver.

F. Upon the application of any person, the board may review, and for good cause, modify or revoke a waiver from requirements of this article.

9VAC5-45-130. Test methods and procedures.

A. The provisions of subsection G of 9VAC5-45-30 (Emission testing) apply. The other provisions of 9VAC5-45-30 do not apply.

B. Testing to determine compliance with 9VAC5-45-90 B of this article shall be performed by using the following test procedures (see 9VAC5-20-21):

1. CARB "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts."

2. CARB "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts."

C. Testing to determine compliance with 9VAC5-45-90 A of this article shall be performed by using all test procedures in subsection B of this section and the following test procedure: CARB Determination of Permeation Rate for Spill-Proof Systems (see 9VAC5-20-21). Alternative methods that are shown to be accurate, precise, and appropriate may be used upon written approval of the board.

9VAC5-45-140. Monitoring.

The provisions of 9VAC5-45-40 (Monitoring) do not apply.

9VAC5-45-150. Notification, records and reporting.

The provisions of subsections E, F, and G of 9VAC5-45-50 (Notification, records and reporting) apply. The other provisions of 9VAC5-45-50 do not apply.

#### HISTORICAL NOTES:

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