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

9 VAC 5 CHAPTER 40.
EXISTING STATIONARY SOURCES.

PART II.
Emission Standards.

ARTICLE 42.
Emission Standards for Portable Fuel Container Spillage (Rule 4-42).

9 VAC 5-40-5700. Applicability.

A. Except as provided in subsections C through H of this section, the provisions of this article apply to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts.

B. The provisions of this article apply only to sources and persons in the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas designated in 9 VAC 5-20-206.

C. The provisions of this article do not apply to any portable fuel container or spout manufactured for shipment, sale, and use outside of the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas.

D. This article does 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 9 VAC 5-40-5720, 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 Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas; and (ii) that the manufacturer or distributor has taken reasonable prudent precautions to assure that the portable fuel container or spout is not distributed within the Northern Virginia and Fredericksburg Volatile Organic Compound Emissions Control Areas. This subsection does not apply to portable fuel containers or spouts that are sold, supplied, or offered for sale to retail outlets.

E. This article does not apply to safety cans meeting the requirements of 29 CFR Part 1926 Subpart F.

F. This article does not apply to portable fuel containers with a nominal capacity less than or equal to one quart.

G. This article does not apply to rapid refueling devices with nominal capacities greater than or equal to four gallons, provided such devices are designed either (i) to be used in officially sanctioned off-highway motorcycle competitions, (ii) to create a leak-proof seal against a stock target fuel tank, or (iii) or to operate in conjunction with a receiver permanently installed on the target fuel tank.

H. This article does 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.

I. 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.

9 VAC 5-40-5710. 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 meaning given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meaning given them in 9 VAC 5 Chapter 10 unless otherwise required by context.

C. Terms defined.

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

"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.

“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 ten gallons or less intended for reuse that is designed or used primarily for receiving, transporting, storing, and dispensing fuel.

“Product category” means the applicable category that best describes the product with respect to its nominal capacity, material construction, fuel flow rate, and permeation rate, as applicable, as determined by the board.

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

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

“Spill-proof spout” means any spout that complies with the standards specified in 9 VAC 5-40-5720 B.

“Spill-proof system” means any configuration of portable fuel container and firmly attached spout that complies with the standards in 9 VAC 5-40-5720 A.

“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.

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

9 VAC 5-40-5720. Standard for volatile organic compounds.

A. No person shall sell, supply, offer for sale, or manufacture for sale any portable fuel container which, at the time of sale or manufacture, does not meet 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. Provides a fuel flow rate and fill level of:

a. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase “Low Flow Rate” in type of 34 point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any; or

b. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

c. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

5. Does not exceed a permeation rate of 0.4 grams per gallon per day.

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

B. No person shall sell, supply, offer for sale, or manufacture for sale any spout which, at the time of sale or manufacture, does not meet 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. Provides a fuel flow rate and fill level of:

a. Not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:

(1) Less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or,

(2) Greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase “Low Flow Rate” in type of 34 point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto; or,

b. Not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

c. Not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.

4. 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 9 VAC 5-40-5760. The manufacturer of portable fuel containers or spouts shall perform the tests for determining compliance as set forth in 9 VAC 5-40-5760 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. 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 9 VAC 5-40-5750 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.

9 VAC 5-40-5730. Administrative requirements.

A. Each manufacturer of a portable fuel container subject to and complying with 9 VAC 5-40-5720 A shall clearly display on each spill-proof system:

1. The phrase “Spill-Proof System”;

2. A date of manufacture or representative date; and

3. A representative code identifying the portable fuel container as subject to and complying with 9 VAC 5-40-5720 A.

B. Each manufacturer of a spout subject to and complying with 9 VAC 5-40-5720 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; and

3. A representative code identifying the spout as subject to and complying with 9 VAC 5-40-5720 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 subject to subsection A or B shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.

E. Each manufacturer of a spout subject to subsection B 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 9 VAC 5-40-5720 A on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto.

F. Manufacturers of portable fuel containers not subject to or not in compliance with 9 VAC 5-40-5720 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.

G. Each manufacturer of a portable fuel container or spout subject to and complying with 9 VAC 5-40-5720 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.

9 VAC 5-40-5740. Compliance.

The provisions of subsections B, D, F, and J of 9 VAC 5-40-20 (Compliance) apply. The other provisions of 9 VAC 5-40-20 do not apply.

9 VAC 5-40-5750. 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 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;

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.

9 VAC 5-40-5760. Test methods and procedures.

A. The provisions of subsection G of 9 VAC 5-40-30 (Emission testing) apply. The other provisions of 9 VAC 5-40-30 do not apply.

B. Testing to determine compliance with 9 VAC 5-40-5720 B of this article shall be performed by using the following test procedures:

1. California Air Resources Board (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.

3. CARB Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts.

C. Testing to determine compliance with 9 VAC 5-40-5720 A of this article shall be performed by using all test procedures in subsection B above and the following test procedure: CARB Determination of Permeation Rate for Spill-Proof Systems. These test methods are incorporated by reference in 9 VAC 5-20-21.

9 VAC 5-40-5770. Notification, records and reporting.

The provisions of subsections D, E, F, and H of 9 VAC 5-40-50 (Notification, records and reporting) apply. The other provisions of 9 VAC 5-40-50 do not apply.

HISTORICAL NOTES:

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