

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

9 VAC 5 CHAPTER 80.
PERMITS FOR STATIONARY SOURCES.

9 VAC 5-80-40. Permits - operating.

A. Applicability.

1. Except as provided in subsection A 3 of this section, the provisions of this section apply to the operation of any stationary source.

2. The provisions of this section apply throughout the Commonwealth of Virginia.

3. The provisions of this section shall not apply to the following:

a. Any source exempted by the new source exemption levels in 9 VAC 5-80-11; or

b. Any existing source that would be exempted by the new source exemption levels in 9 VAC 5-80-11 if the source were a new source.

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

a. Provisions referring to "sources" or "stationary sources" are applicable to the operation of all stationary sources.

b. Provisions referring to "major stationary sources" are applicable to the operation of all major stationary sources as may be defined by the applicable regulation.

B. Definitions.

1. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection B 3 of this section.

2. As used in this section, all terms not defined here shall have the meaning given them in 9 VAC 5 Chapter 10 (9 VAC 5-10-10 et seq.), unless otherwise required by context.

3. Terms defined.

"Actual emissions" means the actual rate of emissions of a pollutant from any stationary source. In general, actual emissions as of a particular date shall equal the highest annual rate, in tons per calendar year, at which the source actually emitted a pollutant during the consecutive five-year period which precedes the particular date and which is representative of normal source operation. The board may allow the use of a different historical time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the source's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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

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

"Complete application" means that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

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

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

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR 60 and 61, requirements within the State Implementation Plan, and any permit requirements established pursuant to (i) 40 CFR 52.21; (ii) 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter, or 9 VAC 5-80-30; or (iii) this section, provided the public participation requirements of subsection S of this section are met.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any air pollutant.

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

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or which is shown by an air quality impact analysis (using modeling or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or future emissions data.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a 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 state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source, but do not come from the major stationary source itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to 9 VAC 5-20-110, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same 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., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9 VAC 5-20-21).

C. General.

1. No owner or other person shall operate any stationary source without first obtaining from the board a permit to operate the source. The schedule of issuance of these permits shall be as follows:

a. No owner or other person shall operate any existing major stationary source after January 1, 1995, without first obtaining from the board a permit to operate the source. Permit applications to obtain these permits shall be submitted between July 1, 1991, and October 1, 1994, on a schedule to be determined by the board.

b. Permit applications for all other stationary sources shall be submitted on and permits shall be issued on a schedule to be approved by the board. The schedule shall be approved by the board by July 1, 1994. The provisions of this section are waived for such sources until such time as the board prescribes the required schedule.

2. The board may combine the requirements of and the permits for emission units within a stationary source subject to this chapter into one permit. The board may likewise combine the requirements of and applications for permits for emission units within a stationary source required by this chapter into one application.

3. Permits issued under the provisions of 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter, or 9 VAC 5-80-30 may be considered as having met the requirements of this section but shall be subject to the provisions of subsections P and R of this section.

4. No provisions of these regulations shall limit the power of the board to issue an operating permit pursuant to this section in order to remedy a condition that may cause or contribute to the endangerment of human health or welfare or to remedy a nonattainment condition or both.

5. Operating a stationary source without a permit issued under this section shall not constitute a violation of this section provided the failure to obtain a permit was due to the failure

of the board to issue a permit without specific notice under subsection G 4 or R 5 of this section.

6. Any decisions of the board made pursuant to this section may be appealed pursuant to 9 VAC 5-20-90 or 9 VAC 5-20-130.

D. Applications.

1. Applications for permits shall be signed by the corporate president or by another duly authorized agent of the corporation; or by an equivalently responsible officer in the case of organizations other than corporations; or, in other cases, by the owner; or, in the case of governmental entities, by the highest executive official of such entities. A person is a duly authorized agent only if the authorization is made in writing by the corporate president or by an equivalently responsible officer in the case of organizations other than corporations. Such signature shall constitute personal affirmation that the statements made in the application are true and complete to the best of the knowledge and belief of the signer.

2. A single application is required identifying each emission unit subject to this section. The application shall be submitted according to procedures approved by the board. Where several units are included in one stationary source, a single application covering all units in the source shall be submitted. A separate application is required for each location.

E. Information required.

1. Each application for a permit shall include such information as may be required by the board to determine the effect of the stationary source on the ambient air quality and to determine compliance with applicable emission standards. The information required shall include, but is not limited to, the following:

a. All information specified on forms furnished by the board. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations;

b. Any information or analysis that the board deems necessary to review the air quality impact of the source;

c. Verification of compliance with the provisions of subsection N of this section; and

d. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the source.

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

F. Standards and conditions for granting permits.

1. No permit shall be granted pursuant to this section unless it is shown to the satisfaction of the board that the following standards and conditions will be met:

a. The source shall operate without causing a violation of the applicable provisions of these regulations;

b. The source shall be in compliance with all applicable emission standards or meet the provisions of any administrative enforcement mechanism issued pursuant to 9 VAC 5-20-30 A 1;

c. The source shall not cause or contribute to a violation of any applicable ambient air quality standard; and

d. The source shall operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the State Implementation Plan in effect at the time that an application is submitted so as not to prevent or interfere with the attainment or maintenance of any applicable ambient air quality standard.

2. Permits may be granted to stationary sources located in nonattainment areas provided the requirements of subsections F 1 a, b and d of this section are met.

3. To obtain a permit under this section, sources emitting noncriteria pollutants shall be reviewed under Article 3 (9 VAC 5-40-160 et seq.) of 9 VAC 5 Chapter 40 or Article 3 (9 VAC 5-50-160 et seq.) of 9 VAC 5 Chapter 50, as may be applicable, for the noncriteria pollutants emitted. If the review has not been completed, the permit may be issued if the permit contains a schedule for the evaluation of the noncriteria pollutants emitted by the affected source.

4. No permit shall be granted pursuant to this section unless it contains emission standards for the stationary source. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are met permanently:

a. If an emissions unit was subject to emission standards prescribed in these regulations prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this section;

b. A permit issued under this section may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in these regulations prior to the issuance of the permit;

c. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant;

d. In no case shall a standard result in emissions which would exceed the lesser of the following:

(1) Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued; or

(2) The emissions rate based on the potential to emit of the emissions unit.

e. The emission standards shall contain emission limitations based on the highest actual emissions documented over the five calendar years prior to the permit application date, taking into account energy, environmental, health-related toxic and economic impacts, and other factors. Emission standards shall only include limitations that are determined by the board to be achievable through application of production processes or available methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment; fuel cleaning or treatment; fuel combustion techniques; or substitution of less toxic or nontoxic materials; and

f. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

5. In consideration of the factors specified below, the owner may propose and the board may establish an alternative emission standard provided the owner demonstrates to the satisfaction of the board that it meets the standards and conditions in subsection F 1 and F 4 a and d of this section.

a. The impact upon the ability of the source to operate in a competitive and efficient manner.

b. The previous efforts to reduce actual emissions taken at the owner's initiative.

c. The technological and economic practicality of reducing emissions.

d. The impact upon the availability and cost of fuels and process materials.

6. An emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subsections F 1 and F 4 a and d of this section, and the increased emission levels would not make the source subject to 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter, or 9 VAC 5-80-30, as appropriate.

7. Operating permits issued under this section shall contain, but not be limited to, the following elements:

a. Emission standards as set out in this subsection;

b. Conditions necessary to enforce emission standards. Conditions to provide enforceability may include, but not be limited to, the following:

(1) Limit on fuel sulfur content;

(2) Limit on production rates with time frames as appropriate to support the emission standards in this subsection;

(3) Limit on raw material usage rate; and

(4) Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

c. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size;

d. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated;

e. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, the following:

(1) Pressure indicators and required pressure drop;

(2) Temperature indicators and required temperature;

(3) pH indicators and required pH; and

(4) Flow indicators and required flow.

f. The expiration date of the permit; and

g. Other requirements as may be necessary to ensure compliance with the applicable state and federal regulations.

8. Operating permits issued under this section may contain, but not be limited to, the following elements:

a. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory;

b. Stack test requirements;

c. Reporting or recordkeeping requirements, or both;

d. Continuous emission or air quality monitoring requirements, or both;

and

e. Compliance schedules.

G. Action on permit application.

1. After receipt of an application or any additional information, the board shall advise the applicant of any deficiency in such application or information.

2. When supported by justification which the board deems adequate, the board may, upon request by an owner, extend the expiration date of a permit by a period not to exceed 180 days for the purpose of allowing sufficient time for an owner to correct such deficiencies in the application as have been identified by the board and to allow completion of the application review by the board.

3. Processing time for a permit is normally 90 days following receipt of a complete application. The board may extend this time period if additional information is required. Processing steps may include, but not be limited to:

a. Completion of the preliminary review and analysis in accordance with subsection H of this section and the preliminary decision of the board;

b. Inspection of the stationary source, provided an inspection has not been conducted within the last six months;

c. Public comment period, when required by subsection S of this section;

and

d. Completion of the final review and analysis and the final decision of the board.

4. The board normally will take action on all applications after completion of

the review and analysis, unless more information is needed. The board shall issue the permit or notify the applicant in writing of its decision, with its reasons, not to issue the permit.

5. Within five days after receipt of the permit pursuant to subsection G 4 of this section, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the board upon request.

H. Application review and analysis.

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

1. Applications shall be subject to a control technology review to determine if each emissions unit within the source is equipped to comply with all applicable emission standards.

2. Applications may be subject to an air quality analysis to determine the impact of pollutant emissions.

I. Compliance determination and verification by testing.

1. The board may require owners of sources subject to this section to conduct such tests as are necessary to determine the type or amount or both of the pollutants emitted from the source or whether the source will be in compliance with any provisions of any regulation of the board. Such tests shall be conducted in a manner acceptable to the board.

2. The requirements under subsection I 1 of this section shall be carried out in accordance with the provisions contained in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.), and 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), as applicable, or by other means acceptable to the board.

J. Monitoring requirements.

1. The board may require owners of sources subject to this section to install, calibrate, operate and maintain equipment for continuously monitoring and recording emissions or process parameters or both, and establish and maintain records, and make periodic emission reports as the board may prescribe. These requirements shall be conducted in a manner acceptable to the board.

2. The requirements under subsection J 1 of this section shall be carried out in accordance with the provisions contained in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.), and 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), as applicable, or by other means acceptable to the board.

K. Reporting requirements.

1. The board may require owners of sources subject to this section to establish and maintain records, provide notifications and reports, revise reports, report emission tests or monitoring results in a manner and form and using procedures as the board may prescribe. Any records, notifications, reports, or tests required under this section shall be retained by the owner for at least two years following the date of such records, notifications, reports or tests.

2. The requirements under subsection K 1 of this section shall be carried out in accordance with the provisions contained in 9 VAC 5 Chapter 40 (9 VAC 5-40-10 et seq.), 9 VAC

5 Chapter 50 (9 VAC 5-50-10 et seq.), and 9 VAC 5 Chapter 60 (9 VAC 5-60-10 et seq.), as applicable, or by other means acceptable to the board.

3. If a stationary source is shut down, the owner shall notify the board within six months of the date the source is shut down and the provisions of subsection P 5 of this section shall apply.

L. Existence of permit no defense.

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

M. Circumvention.

Regardless of the exemptions provided in this section, permits shall be required of owners who 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.

N. Compliance with local zoning requirements.

The owner shall comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located provided, however, that such compliance does not relieve the board of its duty under 9 VAC 5-20-140 of these regulations and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

O. Transfer of permits.

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

2. In the case of a transfer of ownership or name change of a stationary source, the new owner shall abide by any current permit issued to the previous owner or to the same owner under the previous source name. The new owner shall notify the board of the change in ownership or source name or both within thirty days of the transfer.

P. Expiration, extension and renewal of permits.

1. In cases where a stationary source is operational, a permit or any renewal of one shall be valid for a period not to exceed five years from the date of issuance.

2. In cases where the stationary source has been issued a permit under 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter, or 9 VAC 5-80-30 and is not operational, a permit or any renewal of one shall be valid for a period not to exceed five years from the date the source or any portion thereof becomes operational.

3. Not less than 180 days prior to the expiration date of the permit, the applicant shall make application for renewal of the permit if the applicant desires to continue operation of that source. Penalties may be assessed if an owner submits an application to the board less than 180 days prior to the expiration date of the permit.

4. The application for renewal of a permit shall be substantiated with current

emissions data, test results, reports or other data as deemed necessary by the board.

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

a. The final decision shall be rendered as follows:

(1) Upon a determination that the source has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the source is considered to be shut down permanently and (ii) that if the owner fails to provide within three months of the notice written response to the board that the shutdown is not to be considered permanent, the decision shall become final within six months of the notice. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent and a projected date for restart-up of the source.

(2) If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the decision to consider the shutdown permanent shall become final one year after the date of the notice of the tentative decision.

b. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that a source is shutdown permanently prior to any final decision rendered under paragraph 5 a of this subsection.

Q. Amendments to permits.

1. Amendments to permits issued under this section may be initiated by the board or the permittee.

2. A permittee shall request an amendment of a permit by applying to the board. The permittee shall include a statement of the reasons why amending the permit is necessary.

3. The board may order appropriate changes to any permit whenever it finds that the conditions of the permit will not be sufficient to meet all of the standards and requirements contained in this section.

4. Permit amendments shall be processed in the same manner and under the same requirements as permits issued under this section.

5. Permit amendments shall not be used to extend the term of the permit.

6. Permit amendments that cause no change in emissions from the source shall be deemed minor amendments, shall be processed in an expedited manner and shall be exempted from the public participation requirements in subsection S.

R. Enforcement.

1. Permits issued under this section 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 standards.

2. Regardless of the provisions of subsections P 1 or 2 of this section, the board may revoke any permit prior to its expiration date if the permittee:

a. Willfully makes material misstatements in the permit application or any amendments to it;

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

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

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

e. Fails to comply with the applicable provisions of 9 VAC 5-80-10, Article 8 (9 VAC 5-80-1700 et seq.) of Part II of this chapter and 9 VAC 5-80-30.

3. 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 R 2 of this section or for any other violations of these regulations.

4. Violation of these regulations shall be grounds for revocation of permits issued under this section and are subject to the civil charges, penalties and all other relief contained in 9 VAC 5 Chapter 20 (9 VAC 5-20-10 et seq.) and §§ 10.1-1309, 10.1-1311 and 10.1-1316 of the Virginia Air Pollution Control Law.

5. The board shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit.

S. Public participation.

1. Prior to the decision of the board, permit applications for major stationary sources shall be subject to a public comment period of at least 30 days.

2. When a public comment period is required, the board shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment on the information available for public inspection under the provisions of paragraph 2 a of this subsection.

a. Information on the permit application (exclusive of confidential information under 9 VAC 5-20-150), as well as the preliminary review and analysis and tentative determination of the board, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

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

3. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to reconsider the tentative determination of

the board. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

- a. The name, mailing address and telephone number of the requester;
- b. The names and addresses of all persons for whom the requester is acting as a representative;
- c. The reason why a hearing is requested; and
- d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including an explanation of how and to what extent such interest would be directly and adversely affected by the decision of the board.

4. The board shall review all timely requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper; and within 30 calendar days following the expiration of the public comment period shall grant a public hearing if it finds the following:

- a. There is significant public interest in the permit application in question; and
- b. There are substantial, disputed issues relevant to the permit application in question.

5. The board shall notify by mail the applicant and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain a description of procedures for the public hearing and for the final decision under this section.

6. If the board decides to hold a public hearing, the hearing shall be scheduled at a time between 30 and 60 days after mailing the notification required in subsection S 5 of this section.

7. The procedures for notification to the public and availability of information used for the public comment period or provided in paragraph 2 of this subsection shall also be followed for the public hearing. The hearing shall be held in the affected air quality control region.

8. The requirements of this subsection that provide for a public hearing shall not apply to the renewal of permits provided the renewed permit does not allow an increase in any pollutant emissions.