

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

PART II

GENERAL PROVISIONS

Effective Date: January 1, 1985, unless otherwise indicated.

* * *

§120-02-02 Establishment of regulations and orders.

A. Regulations for the Control and Abatement of Air Pollution are established to implement the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.

B. Regulations for the Control and Abatement of Air Pollution shall be adopted, amended or repealed in accordance with the provisions of 10-17.18 [*currently cited as § 10.1-1308*] of the Virginia Air Pollution Control Law, Articles 1 and 2 of the Administrative Process Act and the Public Participation Guidelines in Appendix E.

C. Regulations, amendments and repeals shall become effective as provided in § 9-6.14:9.3 of the Administrative Process Act, except in no case shall the effective date be less than 60 days after adoption by the board.

D. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under § 9-6.14:6 of the Administrative Process Act, but such rule or regulation shall remain effective no longer than 60 days unless readopted following the requirements of subsection B of this section. The provisions of this subsection are not applicable to emergency special orders; such orders are subject to the provisions of subsection F of this section.

E. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.

4. Federal Register.
5. Technical and scientific reference documents.

Additional information on the specific documents incorporated and their availability may be found in Appendix M.

F. Orders, special orders and emergency special orders may be issued pursuant to § 10-17.18(d) or 10-17.18:1 [*currently cited as § 10.1-1307 D or § 10.1-1309*] of the Virginia Air Pollution Control Law.

* * *

§ 120-02-04 Hearings and proceedings.

A. Hearings and proceedings by the board may take any of the following forms:

1. The public hearing and informational proceeding required before considering regulations or variances, in accordance with § 10-17.18(b) and (c) [*currently cited as § 10.1-1307 C and 10.1-1308*] of the Virginia Air Pollution Control Law. The procedure for a public hearing and informational proceeding shall conform to § 9-6.14:7 of the Administrative Process Act, except as modified by § 10-17.18(b) and (c) [*currently cited as § 10.1-1307 C and 10.1-1308*] of the Virginia Air Pollution Control Law.

2. The informal fact finding proceeding which, with all parties consenting, may be used to ascertain facts upon which decisions of the board are based, in accordance with § 9-6.14:11 of the Administrative Process Act. The procedure for an informal fact finding proceeding shall conform to § 9-6.14:11 of the Administrative Process Act.

3. The formal hearing for the determination of violations, and for the enforcement or review of its orders and regulations, in accordance with §10-17.18 (d) and (h) [*currently cited as § 10.1-1307 D and F*] of the Virginia Air Pollution Control Law. The procedure for a formal hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by §10-17.18 (d) and (h) [*currently cited as § 10.1-1307 D and F*] of the Virginia Air Pollution Control Law.

4. The special order hearing or emergency special order hearing for the determination of violations, and for the enforcement or review of its orders and regulations, in accordance with § 10-17.18:1 [*currently cited as §10.1-1309*] of the Virginia Pollution Control Law. The procedures for the special order hearing or emergency special order hearing shall conform to § 9-6.14:12 of the Administrative Process Act, except as modified by § 10-17.18:1 [*currently cited as §10.1-1309*] of the Virginia Air Pollution Control Law.

B. Records of hearings by the board may be kept in either of the following forms:

1. Oral statements or testimony at any public hearing or informational proceeding will be stenographically or electronically recorded, and may be transcribed to written form.

2. Formal hearings and hearings for the issuance of special orders or emergency special orders will be recorded by a court reporter, or electronically recorded for transcription to written form.

C. Availability of record of hearings by the board.

1. A copy of the transcript of a public hearing or informational proceeding, if transcribed, will be provided within a reasonable time to any person upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. Any person desiring a copy of the transcript of a special order, emergency special order or formal hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

Virginia Rule Citation: VR120-02-05A.

Variances— General

“1. Pursuant to § 10-17.18(c) of the Virginia Air Pollution Control Law, the board at its discretion may grant variances to any provision of these regulations after a public hearing in accordance with subsection 120-02-04 A 1.

2. Notices of public hearings on applications for variances shall be advertised in at least one major newspaper of general circulation in the affected air quality control region at least 30 days prior to the date of the hearing.”

Virginia Rule Citation- VR 2.05(b) (State Effective Date: August 14, 1975)

“b. Fuel variance.

(1). Notwithstanding anything to the contrary appearing in this section, the Executive Director may grant a fuel variance for fuel burning equipment from applicable provisions of these regulations if, he finds after a thorough investigation and public hearing:

(i). That the owner has attempted, in good faith and prior to the request for the fuel variance, to comply with applicable provisions of these regulations.

(ii). That the owner has substantial cause to believe he will be unable to obtain such fuel as would allow the operation of the source in compliance with applicable provisions of these regulations.

(iii). That the maximum particulate and sulfur emissions from fuels permitted in the fuel variance as a practical matter the lowest that the availability of fuels will permit.

(iv). That a state of urgency exists for the source for which the fuel variance is requested which could not have been avoided by said owner.

(v). That the period of the fuel variance will not exceed the reasonably predicted unavailability of fuel which would allow compliance with applicable provisions of these regulations, or 120 days, whichever is less.

(2). The owner requesting the fuel variance shall submit to the Executive Director the following, where appropriate:

(i). The requested commencement and termination dates of the fuel variance.

(ii). The type and quantity of fuel to be used under the requested fuel variance, along with the maximum ash and sulfur content, if any.

(iii). An affidavit stating why the owner is unable to, or has substantial cause to believe that he will be unable to obtain fuel which would allow compliance with applicable provisions of these regulations.

(iv). An estimate of the amount of fuel to be conserved.

(v). An estimate of the increased air pollutants that might cause violations of the ambient air quality standards.

(vi). An estimate, with reasons therefor, of the duration of the shortage of fuel which would allow compliance with applicable provisions of these regulations.

(vii). Such other information as the Executive Director may require to make his findings as provided in paragraph (b)(1) of this section.

(3). Notice of public hearings on applications for fuel variances shall be advertised at least 10 days prior to the date of the hearing, in at least one major newspaper of general circulation in the air quality control region in which the affected source is located.

(4). Fuel variances may be granted only for individual sources, and not for categories or classes.

(5). No fuel variance shall be granted for a period in excess of 120 days. Any request for a variance for a period beyond 120 days shall be governed by the provisions of paragraph (a) of this section, except that the Board, where appropriate, may require compliance with any of the conditions and requirements herein.

(6). Nothing in this paragraph shall be construed to limit, alter or otherwise affect substantially or procedurally the obligation of any owner or other person to comply with any provision of these regulations not specifically affected by this paragraph.”

* * *

§ 120-02-09 Appeals.

A. Any owner or other person aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand a formal hearing in accordance with § 9-6.14:12 of the Administrative Process Act, provided a petition requesting such hearing is filed with the board. In cases involving actions of the board, such petition shall be filed within 30 days after notice of such action is mailed or delivered to such owner or other person.

B. Prior to any formal hearing, the board shall, provided all parties consent, ascertain the fact basis for its decision in accordance with § 9-6.14:11 of the Administrative Process Act.

C. Any decision of the board resultant from a formal hearing shall constitute the final decision of the board.

D. Any owner or other person aggrieved by a final decision of the board may appeal such decision in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 9-6.14:16 of the Administrative Process Act. Any petition for appeal shall be filed within 30 days after the date of such final decision.

E. Nothing in this section shall prevent disposition of any case by consent.

F. Any petition for a formal hearing or for an appeal by itself shall not constitute a stay of decision or action.

SIP Status: This language (State effective date: 2/1/85) is SIP-approved. Virginia has twice revised the wording of the Appeals provisions with significant changes. The first revision became effective 2/1/92, and the second revision became effective 1/1/98. Although Virginia had formally submitted both changes as SIP revisions, it has also formally withdrawn both changes from further SIP consideration. As a result, the State provisions are significantly different than the SIP provisions. Virginia also has indicated that it intends to revise these provisions once again in the near future.

* * *

§ 120-02-12 Procedural information and guidance.

- A. The board may adopt detailed procedures which:
 - 1. Require data and information in addition to and in amplification of the provisions of these regulations;
 - 2. Are reasonably designed to determine compliance with applicable provisions of these regulations; and
 - 3. Set forth the format by which all data and information shall be submitted.
- B. In cases where these regulations specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing, the owner may request information and guidance concerning the proper procedures and methods and the board shall furnish in writing such information on a case-by-case basis.

APPENDICES

(State Effective Date: January 1, 1985)

* * *

APPENDIX E – PUBLIC PARTICIPATION GUIDELINES

- I. The procedures in Section II of this appendix shall be used for soliciting the input of interested parties in the formation and development or repeal of regulations and any revision thereto. These procedures shall not only be utilized prior to the formation and drafting of regulations, but shall be utilized during the entire formation, promulgation and final adoption process.
- II. Public participation procedures.
 - A. Establish and maintain a Regulation Development List consisting of parties expressing an interest in the adoption, amendment or repeal of regulations.
 - B. Prepare notice of proposed regulatory action, which will include:
 - 1. Subject of the proposed regulation.

2. Identification of the entities that will be affected.
3. Discussion of the need and purpose of the proposed regulation and the issues involved.
4. Regulatory alternatives.
5. Regulatory constraints.
6. Tentative determinations by the agency, if any.
7. Listing of applicable laws or regulations, and location where these documents can be reviewed or obtained.
8. Timetable for reaching a decision.
9. Request for comments from interested parties.
10. Request for volunteers to serve on ad hoc advisory group (whenever appropriate).
11. Notification of time and place of public meeting.
12. Name, address and telephone number of staff person to be contacted for further information.

C. Obtain board approval of the notice.

D. Schedule a public meeting to receive views and comments and answer questions of the public. The meeting will be held no less than thirty days following publication of the notice and will normally be held in Richmond; but if the intended regulation will apply only to a particular area of the state, the meeting will be held in the area affected.

E. Disseminate notice to the public via:

1. Distribution by mail to parties on Regulation Development List.
- 11 2. Publication in the Virginia Register.
3. Press release to media.

F. Whenever the board considers it appropriate form ad hoc advisory group to make recommendations on the proposed regulation. The ad-hoc advisory group shall be formed so as to give a balanced representation of interested parties.

G. After consideration of public input, draft regulation (in consultation with ad hoc advisory group) and prepare documentation for the Governor's Office.

H. Present draft regulation to board and request authority for public hearing.

I. Schedule a public hearing to receive public comments on draft regulation. The hearing shall be at the end of a 60 day public comment period. As a minimum, there shall be at least one hearing in the Richmond area; and additional hearings may be held throughout the state as board policy may dictate. A board member will be present at the hearing in the Richmond area if the board expects the public testimony to be significant.

J. Send copy of notice of public hearing/comment period and draft regulation to advisory group and to all who attended the public meeting or submitted comments.

K. Submit regulation to a 60 day public hearing/comment period by forwarding the following documents to the Virginia Registrar of Regulations:

1. Notice of public hearing/comment period, which must contain the following:

- a. The date, time and place of the hearing.
- b. The subject, substance, issues, basis and purpose of the regulation.
- c. The legal authority of the agency to act.
- d. The name, address and telephone number of an individual to contact for further information.

2. Full text of regulation.

3. Summary of regulation.

4. Statement of basis, purpose and impact.

L. Concurrently with the preceding step, submit required documentation to the Governor's Office.

M. Registrar of Regulations publishes the hearing notice in Virginia Register and in Richmond area newspapers and in consultation with the board publishes the hearing notice in newspapers in other regions of the state with the minimum requirement being that the notice be published in at least one major newspaper of general circulation in each Air Quality Control Region affected. Registrar of Regulations also publishes documents listed in subsection K 1 through 4 above in the Virginia Register.

N. During the public comment period, the regulation is reviewed by the following:

1. The public.
2. The Governor.
3. The Legislature.
4. Cabinet Secretary.
5. The Attorney General.

O. Following the public hearing the remaining steps in the adoption process are carried out in accordance with the provisions of the Administrative Process Act.

APPENDIX F – DELEGATION OF AUTHORITY

I. The delegation of authority specified within this appendix is subject to the following restrictions:

A. The Board by its own motion has the right to exercise authority in any of the following delegated powers should it choose to do so.

B. Any person has the right to appeal a decision of the Executive Director or a Regional Director to the Board or the Executive Director as appropriate. The appeal must be filed within 30 days after the decision is rendered and should contain reasons or grounds for appeal.

C. The notice of appeal by itself does not constitute a stay of decision. A stay of decision must be sought through appropriate legal channels.

II. The following administrative and decision making powers are conferred upon the Executive Director by the Board.

A. Maintain the offices and keep the records and files of the Board.

B. Provide for all of the necessary administrative support required by the Board in conducting regular or special meetings, holding public hearings, issuing orders, granting variances or performing any other duties prescribed by the Virginia Air Pollution Control Law or these regulations.

C. Provide for all of the necessary administrative support required by the Technical

Advisory Committee of the Board in carrying out its advisory duties.

- D . Prepare and submit reports required by State and Federal authorities.
- E. Prepare and submit budget requests or applications for grants, as directed by the Board.
- F. Supervise and direct the activities of other staff personnel, and provide for a continuing training program in the field of air pollution for employees of the Board.
- G. Conduct a public relations program to make the people of the Commonwealth Virginia aware of the problems of air pollution within the State and cognizant of the activities of the Board to solve the problems.
- H. Represent the Board at conferences, seminars or other similar activities, either intrastate or interstate, in matters pertaining to air pollution.
- I. Cooperate with other agencies of local, State and Federal Governments in the control of air pollution, as authorized under the code of Virginia (1950), as amended.
- J. Administer the program established by the Board for the effective control of air pollution throughout the Commonwealth of Virginia. In the performance of this duty, the Executive Director or his designated representative shall have the authority to:
 - 1. Investigate complaints of violations of these regulations.
 - 2. Establish and maintain a state-wide air sampling network and make observations or take measurements of air pollution in any area of the State for the purpose of determining the air quality in the State as well as evaluating the effectiveness of air pollution controls.
 - 3. Take action necessary to abate or control air pollution in accordance with these regulations.
 - 4. Approve or disapprove control programs in accordance with these regulations.
 - 5 . Provide assistance to localities in regard to local air pollution control, particularly in regard to development of air pollution ordinances and programs.
 - 6 . Act on applications for Federal grants made by localities.
 - 7. Approve or disapprove applications for permits in accordance with these regulations.
 - 8. Certify facilities for the control of air pollution with respect to applications for tax relief made by owners in accordance with the applicable provisions of State or Federal laws.

9. Establish and maintain a source registration system and emission inventory of air pollutants discharged into the atmosphere as provided for in these regulations.

10. Conduct hearings and proceedings provided for in the Virginia Air Pollution Control Law and the Administrative Process Act.

11. Determine, after thorough study of available data and information available from other States and Federal agencies, emission standards and make recommendations to the Board concerning the adoption of emission standards.

12. Approve or disapprove open burning permits in accordance with these regulations.

* * *