

ARTICLE 9

PERMITS FOR MAJOR STATIONARY SOURCES AND  
MAJOR MODIFICATIONS LOCATING IN NONATTAINMENT  
AREAS

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Permits for Major Stationary Sources and Major Modifications  
Locating in Nonattainment Areas or the Ozone Transport Region.  
(replaces 9 VAC 5-80-30)

Highlighted Area not in the EPA Approved SIP

9 VAC 5-80-2000. Applicability.

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## 9VAC5-80-2000. Applicability.

Article 9. Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region

A. The provisions of this article apply to the construction of any new major stationary source or a major modification that is major for the pollutant for which the area is designated as nonattainment. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source or major modification.

B. The provisions of this article apply in (i) nonattainment areas designated in 9VAC5-20-204 or (ii) the Ozone Transport Region as defined in 9VAC5-80-2010 C. This article applies to all localities in the Ozone Transport Region regardless of a locality's nonattainment status.

C. If the Ozone Transport Region is designated attainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements for areas classified as moderate in 9VAC5-80-2120 B 2. If the Ozone Transport Region is designated nonattainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements of 9VAC5-80-2120 B depending on the classification except if the classification is marginal or there is no classification, the classification shall be moderate for purpose of applying 9VAC5-80-2120 B.

D. 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 which 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 commenced on the source or modification.

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

1. Provisions referring to "sources," "new and/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 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), or Article 8 (9VAC5-80-1605 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 9VAC5-80-2020 E.

F. 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 9VAC5-80-2060 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.

G. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article 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.

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

1. Except as otherwise provided in subsection I of this section, 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: (i) a significant emissions increase and (ii) a significant net emissions increase. A project is not a major modification if it does not cause a significant emissions increase. If a 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 source (i.e., the second step of the process) is contained 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 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, equals or exceeds the significant amount for that pollutant.

4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be 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 equals or exceeds the significant amount for that pollutant.

5. The hybrid test for projects that involve multiple types of emissions units shall be 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 subsection 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 4 of this subsection for the new unit.

I. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9VAC5-80-2144.

J. 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 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50 and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5 Chapter 60.

K. 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 9VAC5-20-21.

#### Statutory Authority

§ 10.1-1308 of the Code of Virginia; §§ 108, 109, and 302 of the Clean Air Act; 40 CFR Parts 50, 53, and 58.

#### Historical Notes

Derived from Volume 15, Issue 11, eff. April 1, 1999; amended, Virginia Register Volume 18, Issue 14, eff. May 1, 2002; Volume 21, Issue 04, eff. December 1, 2004; Volume 22, Issue 23, eff. September 1, 2006; Volume 33, Issue 17, eff. May 17, 2017.

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ARTICLE 9.

Permits for Major Stationary Sources and Major Modifications  
Locating in Nonattainment Areas or the Ozone Transport Region.  
(replaces 9VAC5-80-30)

9VAC5-80-2010. Definitions.

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

B. For the purpose of this article, 9VAC5-50-270 and any related use, the words or terms shall have the meaning 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 9VAC5-80-2144. 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 which precedes the particular date and which 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 the 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.

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

"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 which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a. The applicable standards set forth in 40 CFR 60, 61, and 63;
- b. Any 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.



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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 Article 8 (9VAC5-80-1605 et seq.) of this part.

"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 5-year period immediately preceding when the owner begins actual construction of the project. The board may 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

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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.~~ A different consecutive 24-month period may be used for each regulated NSR pollutant.

(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 ~~5-year~~ 10-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 either under this section or under a plan approved by the administrator, whichever is earlier, except that the ~~5-year~~ 10-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

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any emissions that would have exceeded an emission limitation with which the source shall currently comply, had such 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 state 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 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.~~ A different consecutive 24-month period may be used for each regulated NSR pollutant.

(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 b (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 major 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 definition.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which 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 which mark the initiation of the change.

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"Best available control technology" or "BACT" 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 which achieve equivalent results.

"Building, structure, facility, or installation" means 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 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 nitrogen oxides 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 the U.S. 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

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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, which 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 application" means that the application contains all 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 purposes of permit processing does not preclude the board from requesting or accepting 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 actual emissions.

"Continuous emissions monitoring system (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 (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 (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<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter values 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 megawatt 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

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output capacity of the affected facility.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this article, 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. A replacement unit is an existing 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 in 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 which are

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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 any construction permit issued under regulations approved by 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

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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.

(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 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 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.

"Lowest achievable emission rate (LAER)" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this



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term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"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 in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas in subdivision a (1) of the definition of "major stationary source."

"Major modification"

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

b. Any significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds 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 plan pursuant to the Federal Power Act.

(3) Use of an alternative fuel by reason of an order or rule §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

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before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, 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 which was established after December 21, 1976, 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 national ambient air quality standard during the project and after it is terminated.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the source is complying with the requirements under 9VAC5-80-2144 for a PAL for that pollutant. Instead, the definition for "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:

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(1) Any stationary source of air pollutants which emits, or has the potential to emit, (i) 100 tons per year or more of a regulated NSR pollutant, or (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9VAC5-20-204, or (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9VAC5-20-204, or (iv) 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the Ozone Transport Region; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) 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 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 (or combinations of them) capable of charging more than 250 tons of refuse per day.
- (9) Hydrofluoric acid plants.
- (10) Sulfuric acid plants.

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- (11) Nitric acid plants.
- (12) Petroleum refineries.
- (13) Lime plants.
- (14) Phosphate rock processing plants.
- (15) Coke oven batteries.
- (16) Sulfur recovery plants.
- (17) Carbon black plants (furnace process).
- (18) Primary lead smelters.
- (19) Fuel conversion plants.
- (20) Sintering plants.
- (21) Secondary metal production plants.
- (22) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).
- (23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.
- (24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- (25) Taconite ore processing plants.
- (26) Glass fiber manufacturing plants.
- (27) Charcoal production plants.
- (28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

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(29) Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60, 61, or 63.

"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 the NSR program 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 9VAC5-80-2000 H; 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 before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9VAC5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

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(1) 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

(2) The board has not relied on it in issuing a permit for the source pursuant to this article which permit is in effect when the increase in actual emissions from the particular change occurs.

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

e. A decrease in actual emission 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) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the implementation plan; and

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

f. 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.

g. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"New source performance standard" or "NSPS" means the U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources, as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410.

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"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.

"Nonattainment major new source review (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 § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-2000 et seq.) of this part. Any permit issued under such a program is a major NSR permit.

"Nonattainment pollutant" means within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

"Ozone transport region" means the area established by § 184(a) of the federal Clean Air Act or any other area established by the administrator pursuant to § 176A of the federal Clean Air Act for purposes of ozone. For the purposes of this article, the Ozone Transport Region consists of the following localities: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

"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 9VAC5-80-2144.

"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.

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"PAL effective period" means the period beginning with the PAL effective date and ending five 10 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 only 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 (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<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Prevention of Significant Deterioration (PSD) 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 §§ 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of this part.

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



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"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 of 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 source. In determining the projected actual emissions before beginning actual construction, the owner shall:

a. 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 plan;

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

c. 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, as defined under the definition of potential to emit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the board regarding the permit application.

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of an implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of

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the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the implementation plan for such area.

"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 any of the following:

a. Nitrogen oxides or any volatile organic compound.

b. Any pollutant for which an ambient air quality standard has been promulgated.

c. Any pollutant that is identified under this subdivision as a constituent or precursor of a general pollutant listed under subdivisions a or b of this definition, provided that a such constituent or precursor pollutant may only be regulated under this article as part of regulation of the general pollutant. Precursors identified for purposes of this article shall be the following:

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

(2) Sulfur dioxide is a precursor to  $PM_{2.5}$  in all  $PM_{2.5}$  nonattainment areas.

(3) Nitrogen oxides are presumed to be precursors to  $PM_{2.5}$  in all  $PM_{2.5}$  nonattainment 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) Volatile organic compounds and ammonia are presumed not to be precursors to  $PM_{2.5}$  in any  $PM_{2.5}$  nonattainment area, unless the board determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient  $PM_{2.5}$  concentrations.

d.  $PM_{2.5}$  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  $PM_{10}$  in permits issued under this article. Compliance with emissions

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limitations for PM<sub>2.5</sub> and PM<sub>10</sub> 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.

"Replacement unit" means an emissions unit for which all the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The replacement does not alter the basic design parameters of the process unit.

d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Secondary emissions" means emissions which 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 which causes the secondary emissions. Secondary emissions include emissions from any off-site 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 or major modification. 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.

"Significant" means 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:

a. Ozone nonattainment areas classified as serious or severe in 9VAC5-20-204.

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POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM <sub>2.5</sub> precursor under the definition of "regulated NSR pollutant"
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy

b. Other nonattainment areas.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM <sub>2.5</sub> precursor under the definition of "regulated NSR pollutant"
Ozone	40 tpy of volatile organic compounds

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Lead	0.6 tpy
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"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 equal to or greater than the significant level 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 which emits or may emit a regulated NSR pollutant.

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less,

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and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9 VAC 5-80-2020. General.

A. No owner or other person shall begin actual construction, ~~reconstruction~~ or modification 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. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining from the board a permit to relocate the unit.

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.~~ The If the board and the owner make a mutual determination that it facilitates the efficient processing and issuing of permits for projects that are to be constructed concurrently, the board may combine the requirements of and the permits for emissions units within a stationary source subject to the [major] new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the [major] new source review program be combined into one application.

~~D~~ [E D]. The board may [not] incorporate the terms and conditions of a state operating permit~~[, a minor new source review permit, or a PAL permit]~~ into a permit issued

pursuant to this article. ~~[The permit issued pursuant to this article may supersede the state operating permit provided the public participation provisions of the state operating permit program are followed.]~~

Ⓔ ~~[E E]~~. 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 (9 VAC 5-40-130 et seq.) ~~or Article 3 (9 VAC 5-40-160 et seq.)~~ of 9 VAC 5 Chapter 40, ~~or Article 2 (9 VAC 5-50-130 et seq.) or Article 3 (9 VAC 5-50-160 et seq.)~~ of 9 VAC 5 Chapter 50, Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60, or Article 5 (9 VAC 5-60-300) of 9 VAC 5 Chapter 60.

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.

Ⓕ ~~[G F]~~. 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 5-80-2030. 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.

B. A separate application is required for each stationary source.

C. For projects with phased development, a single application should be submitted covering the entire project.

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

9 VAC 5-80-2040. Application information required.



A. The Board shall will furnish application forms to applicants. Completion of these forms serves as initial registration of new and modified sources.

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

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated air NSR pollutants.

a. A permit application shall describe all emissions of regulated air NSR pollutants emitted from any emissions unit or group of emissions units to be covered by the permit.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent quantifiable.

4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. Actual emission rates in tons per year and other information as may be necessary to determine the net emissions increase of actual emissions.

6. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

7. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air NSR pollutants at the source.

9. Calculations on which the information in subdivisions 3 through 8 of this subsection are based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

10. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit, including the submission of measured air quality data at the proposed site prior to construction, reconstruction or modification. Such measurements shall be accomplished using procedures acceptable to the board.

11. For major stationary sources, the location and registration number for all stationary sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth.

12. For major stationary sources, the analyses required by 9 VAC 5-80-2090 2 shall be provided by the applicant. Upon request, the board will advise an applicant of the reasonable geographic limitation on the areas to be subject to an analysis to determine the air quality impact at the proposed source.

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

9 VAC 5-80-2050. Standards and conditions for granting permits.

A. No permit will be granted pursuant to this article unless it is shown to the satisfaction of the board that the following standards and conditions have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

2. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.

3. The board determines that the following occurs:

a. By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained in accordance with 9 VAC 5-80-2120 such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this article, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the implementation plan) reasonable further progress; or

b. In the case of a new or modified major stationary source which is located in a zone, within the nonattainment area, identified by the administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which

economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source shall not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the implementation plan; and

c. Any emission reductions required as a precondition of the issuance of a permit under subdivision ~~3 a or 3 b of this section~~ a or b of this subdivision shall be state and federally enforceable before such permit may be issued.

4. The applicant shall demonstrate that all major stationary sources owned or operated by such applicant (or by any entity controlling, controlled by, or under common control with such applicant) in the Commonwealth are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under these regulations.

5. The administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this article.

6. The applicant shall demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source, that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

~~B. [Permits may be granted to stationary sources or emissions units that contain emission caps provided the limits or caps are made enforceable as a practical matter using the elements set forth in subsection D of this section.~~

~~C.]~~ Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9 VAC 5-50-270. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions that would exceed the emissions rate based on the potential to emit of the emissions unit.

3. 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.

~~D C].~~ Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical

matter:

1. Emission standards.
2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:
  - a. Limit on fuel sulfur content.
  - b. Limit on production rates with time frames as appropriate to support the emission standards.
  - c. Limit on raw material usage rate.
  - d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.
3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. ~~Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.~~
4. Specifications for air pollution control equipment installed or to be installed. ~~Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.~~
5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:
  - a. Pressure indicators and required pressure drop.
  - b. Temperature indicators and required temperature.
  - c. pH indicators and required pH.
  - d. Flow indicators and required flow.
6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.
8. Reporting or recordkeeping requirements, or both.
9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

9 VAC 5-80-2060. Action on permit application.

A. Within 30 days after receipt of an application, the board ~~shall~~ will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the board in writing and shall 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 ~~shall~~ will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be 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. Processing time for a permit is normally 180 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, the following:

1. Completion of the preliminary review and analysis in accordance with 9 VAC 5-80-2090 and the preliminary decision of the board.
2. Completion of the public participation requirements in accordance with 9 VAC 5-80-2070.
3. Completion of the final review and analysis and the final decision of the board.

C. The board will normally take action on all applications after completion of the review and analysis, or expiration of the public comment period (and consideration of comments from it) when required, unless more information is needed. The board ~~shall~~ will notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9 VAC 5-80-2080.

D. The applicant may appeal the decision pursuant to Part VIII (9 VAC 5-170-190 et

seq.) of 9 VAC 5 Chapter 170.

E. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9 VAC 5-80-2070 F 1.

9 VAC 5-80-2070. Public participation.

A. No later than 30 days after receiving the initial determination notification required under 9 VAC 5-80-2060 A, applicants shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A 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.

C. 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 shall will attend and provide information and answer questions on the permit application review process.

D. Upon 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 B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the board, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing shall be held with notice in accordance with subsection F of this section.

F. For the public comment period and public hearing, the board shall will 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 and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this

subsection. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9 VAC 5-170-60), as well as the preliminary review and analysis and preliminary decision 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.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction 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. 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.

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 ~~shall~~ 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.

H. If appropriate, the board may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the board provides a public briefing, the requirements of subsection F of this section concerning public notification shall be followed.

9 VAC 5-80-2080. 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 5-80-2090. Application review and analysis.

No permit shall be granted pursuant to this article unless compliance with the standards in 9 VAC 5-80-2050 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 such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.).

2. Applications shall be subject to an air quality analysis to determine the impact of ~~qualifying~~ nonattainment pollutant emissions.

9 VAC 5-80-2091. 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 5-80-2180.



B. The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a [Clean Unit or 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 [1 through 3 a and b] 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 units 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 3 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 units identified in subdivision 1 b of this subsection; 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 or potential to emit of 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 year during which records shall be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the 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 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 (e.g., an explanation as to why the emissions differ from the preconstruction projection).

C. The owner shall make the information required to be documented and maintained pursuant to subsection A 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 5-80-270 or 9 VAC 5-80-670.

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 5-80-2100. [Repealed.]

9 VAC 5-80-2110. Interstate pollution abatement.

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

B. Any state or political subdivision may petition the administrator for a finding that any new or modified source emits or would emit any air pollutant in amounts which 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, ~~reconstruction~~ 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 5-80-2120. Offsets.

A. Owners shall comply with the offset requirements of this article by obtaining emission reductions from the same source or other sources in the same nonattainment area, except that for ozone precursor pollutants the board may allow the owner to obtain such emission reductions in another nonattainment area if (i) the other area has an equal or higher nonattainment classification than the area in which the source is located and (ii) emissions from such other area contribute to a violation of the ambient air quality standard in the nonattainment area in which the source is located. By the time a new or modified source begins operation, such emission reductions shall (i) be in effect, (ii) be state and federally enforceable and (iii) assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

B. The (i) ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds or (ii) the ratio of total emission reductions of nitrogen oxides to total increased emissions of nitrogen oxides in ozone nonattainment areas designated in 9 VAC 5-20-204 shall be at least the following:

1. Nonattainment areas classified as marginal — 1.1 to one.
2. Nonattainment areas classified as moderate — 1.15 to one.
3. Nonattainment areas classified as serious — 1.2 to one.
4. Nonattainment areas classified as severe — 1.3 to one.
5. Nonattainment areas with any other classification or no classification — 1 to one.

The ratio of total emissions reductions of the nonattainment pollutant to total increased emissions of the nonattainment pollutant in nonattainment areas (other than ozone nonattainment areas) designated in 9 VAC 5-20-204 shall be at least 1 to one.

C. Emission reductions otherwise required by these regulations shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental

emission reductions which are not otherwise required by these regulations shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of subsection A of this section.

D. The board ~~shall~~ will allow an owner to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

1. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

2. The source demonstrates to the satisfaction of the board that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

3. The source has obtained a written finding from the U.S. Department of Defense, U.S. Department of Transportation, National Aeronautics and Space Administration or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

4. The owner will comply with an alternative measure, imposed by the board, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the board may impose an emissions fee to be paid to the board which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that nonattainment area during the previous three years. The board ~~shall~~ will utilize the fees in a manner that maximizes the emissions reductions in that nonattainment area.

E. For sources subject to the provisions of this article, the baseline for determining credit for emissions reduction is the emissions limit under the applicable implementation plan in the effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area; or

2. The applicable implementation plan does not contain an emissions limitation for that source or source category.

F. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be

allowed only for control below this potential.

G. For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the owner of the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The board will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

H. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally and state enforceable. In addition, the shutdown or curtailment is creditable only if it occurred on or after January 1, 1991.

I. No emissions credit may be allowed for replacing one volatile organic compound with another of lesser reactivity.

J. Where this article does not adequately address a particular issue, the provisions of Appendix S to 40 CFR 51 shall be followed to the extent that they do not conflict with this [article section].

K. Credit for an emissions reduction can be claimed to the extent that the board has not relied on it in issuing any permit under this chapter or has not relied on it in demonstrating attainment or reasonable further progress.

~~L. [Decreases in actual emissions resulting from the installation of add-on control technology or application of pollution prevention measures that were relied upon in designating an emissions unit as a Clean Unit or a project as a PCP cannot be used as offsets.]~~

~~M. Decreases in actual emissions occurring at a Clean Unit cannot be used as offsets, except as provided in 9 VAC 5-80-2141 H and 9 VAC 5-80-2142 J. Decreases in actual emissions occurring at a PCP cannot be used as offsets, except as provided in 9 VAC 5-80-2143 F 4.~~

~~N.] The total tonnage of increased emissions, in tons per year, resulting from a major modification that shall be offset in accordance with § 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.~~

9 VAC 5-80-2130. De minimis increases and stationary source modification alternatives for ozone nonattainment areas classified as serious or severe in 9 VAC 5-20-204.

A. [~~De minimis increases.~~] Increased emissions of volatile organic compounds or nitrogen oxides resulting from any physical change in, or change in the method of operation of, a major stationary source located in an ozone nonattainment area classified as serious or severe in 9 VAC 5-20-204 shall be considered de minimis for purposes of determining the applicability of the permit requirements under this article if the increase in net emissions of the same pollutant from such source is 25 tons or less when aggregated with all other net increases in emissions from the source over a period of five consecutive calendar years which includes the calendar year in which such increase occurred.

B. [~~Modifications~~ The following shall apply to modifications] of major stationary sources emitting less than 100 tons per year of volatile organic compounds or nitrogen oxides.

1. Any physical change in, or change in the method of operation of, a major stationary source with a potential to emit of less than 100 tons per year of volatile organic compounds or nitrogen oxides which results in an increase in emissions of the same pollutant from any discrete operation, unit, or other pollutant emitting activity at that source that is not de minimis under subsection A of this section shall be considered a major modification under this article. However, in applying emission standards under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) to the source, the requirement to apply best available control technology shall be substituted for the requirement to comply with the lowest achievable emission rate.

2. If the owner elects to offset the increase of volatile organic compounds or of nitrogen oxides by a greater reduction in emissions of the pollutant being increased from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, such increase shall not be considered a major modification under this article.

C. [~~Modifications~~ The following shall apply to modifications] of major stationary sources emitting 100 tons per year or more of volatile organic compounds or nitrogen oxides.

1. Any physical change in, or change in the method of operation of, a major stationary source with a potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides which results in an increase in emissions of the same pollutant from any discrete operation, unit, or other pollutant emitting activity at that source that is not de minimis under subsection A of this section shall be considered a major modification under this article.

2. In applying emission standards under 9 VAC 5 Chapter 50 (9 VAC 5-50-10 et seq.) to the source, the requirement to apply best available control technology shall be substituted for the requirement to comply with the lowest achievable emission rate, if the owner elects to offset the increase by a greater reduction in emissions of the pollutant being increased from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to one.

9 VAC 5-80-2140. Exception.

The provisions of this article do not apply to a source or modification that 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 source or modification and the source does not belong to any of the following categories:

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 acid plants;
10. Sulfuric acid plants;
11. Nitric acid plants;
12. Petroleum refineries;
13. Lime plants;
14. Phosphate rock processing plants;
15. Coke oven batteries;
16. Sulfur recovery plants;
17. Carbon black plants (furnace process);
18. Primary lead smelters;
19. Fuel conversion plants;

20. Sintering plants;
21. Secondary metal production plants;
22. Chemical process plants;
23. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input;
24. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
25. Taconite ore processing plants;
26. Glass fiber processing plants;
27. Charcoal production plants;
28. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and
29. Any other stationary source category which, as of August 7, 1980, is being regulated under § 111 or 112 of the federal Clean Air Act (42 USC 7401) 40 CFR Part 60, 61, or 63.

9 VAC 5-80-2141. [Clean Unit test for emissions units that are subject to LAER Reserved].

[A. An owner of a major stationary source may use the Clean Unit Test according to the provisions of this section to determine whether emissions increases at a Clean Unit are part of a project that is a major modification. The provisions of this section apply to any emissions unit for which the board has issued a major NSR permit within the past five years.]

B. The general provisions set forth in this subsection shall apply to Clean Units.

1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection D of this section) and before the expiration date (as determined in accordance with subsection E of this section) will be considered to have occurred while the emissions unit was a Clean Unit.

2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER and the project would not alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subdivision F 4 of this section, the emissions unit remains a Clean Unit.



3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with LAER or the project would alter any physical or operational characteristics that formed the basis for the LAER determination as specified in subdivision F 4 of this section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit requalifies as a Clean Unit pursuant to subdivision C 3 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-2000 I 1 through 4 and 6 as if the emissions unit is not a Clean Unit.

5. For certain emissions units with PSD permits that meet the requirements of subdivisions a and b of this subdivision, the BACT level of emissions reductions or work practice requirements or both shall satisfy the requirement for LAER in meeting the requirements for Clean Units under subsections C through H of this section. For these emissions units, all requirements for the LAER determination under subdivisions 2 and 3 of this subsection shall also apply to the BACT permit terms and conditions. In addition, the requirements of subdivision G 1 b of this section do not apply to emissions units that qualify for Clean Unit status under this subdivision.

a. The emissions unit shall have received a PSD permit within the last five years and such permit shall require the emissions unit to comply with BACT.

b. The emissions unit shall be located in an area that was redesignated as nonattainment for the relevant pollutants after issuance of the PSD permit and before the effective date of the Clean Unit Test provisions in the area.

C. An emissions unit automatically qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 and 2 of this subsection. After the original Clean Unit designation expires in accordance with subsection E of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 3 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-2142. To requalify as a Clean Unit under subdivision 3 of this subsection, the emissions unit shall obtain a new major NSR permit issued through the applicable nonattainment major NSR program and meet all the criteria in subdivision 3 of this subsection. Clean Unit designation applies individually for each pollutant emitted by the emissions unit.

1. The emissions unit shall have received a major NSR permit within the past five years. The owner shall maintain and be able to provide information that would demonstrate that this permitting requirement is met.

2. Air pollutant emissions from the emissions unit shall be reduced through

the use of an air pollution control technology (which includes pollution prevention or work practices) that meets both the following requirements:

a. The control technology achieves the LAER level of emissions reductions as determined through issuance of a major NSR permit within the past five years. However, the emissions unit is not eligible for Clean Unit designation if the LAER determination resulted in no requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type.

b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or expenses to apply a pollution prevention technique to an emissions unit.

3. In order to requalify for the Clean Unit designation, the emissions unit shall obtain a new major NSR permit that requires compliance with the current day LAER, and the emissions unit shall meet the requirements in subdivisions 1 and 2 of this subsection.

D. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit Test to determine whether a project at the emissions unit is a major modification) is determined according to the following:

1. For an original Clean Unit designation and for emissions units that requalify as Clean Units by implementing a new control technology to meet current day LAER, the effective date is the date the emissions unit's air pollution control technology is placed into service, or three years after the issuance date of the major NSR permit, whichever is earlier, but no sooner than the effective date of this revision.

2. For emissions units that requalify for the Clean Unit designation using an existing control technology, the effective date is the date the new, major NSR permit is issued.

E. An emissions unit's Clean Unit designation expires (i.e., the date on which the owner may no longer use the Clean Unit Test to determine whether a project affecting the emissions unit is, or is part of, a major modification) according to the following:

1. For any emissions unit that automatically qualifies as a Clean Unit under subdivision C 1 and C 2 of this section, the Clean Unit designation expires five years after the effective date, or the date the equipment went into service, whichever is earlier; or, it expires at any time the owner fails to comply with the provisions for maintaining Clean Unit designation in subsection G of this section.

2. For any emissions unit that requalifies as a Clean Unit under subdivision C 3 of this section, the Clean Unit designation expires five years after the effective date; or, it expires any time the owner fails to comply with the provisions for maintaining the Clean

Unit designation in subsection G of this section:

F. After the effective date of the Clean Unit designation, and in accordance with the provisions of the applicable federal operating permit program, but no later than when the federal operating permit is renewed, the federal operating permit for the source shall include the following terms and conditions:

1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which the Clean Unit designation applies.

2. If the effective date is not known when the Clean Unit designation is initially recorded in the federal operating permit (e.g., because the air pollution control technology is not yet in service), the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is determined, the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.

3. If the expiration date is not known when the Clean Unit designation is initially recorded into the federal operating permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is determined, the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.

4. All emission limitations and work practice requirements adopted in conjunction with the LAER, and any physical or operational characteristics that formed the basis for the LAER determination (e.g., possibly the emissions unit's capacity or throughput).

5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining the Clean Unit designation (see subsection G of this section).

6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection G of this section.

G. To maintain the Clean Unit designation, the owner shall conform to all the restrictions listed in this subsection. This subsection applies independently to each pollutant for which the emissions unit has the Clean Unit designation. That is, failing to

conform to the restrictions for one pollutant affects Clean Unit designation only for that pollutant.

1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted in conjunction with the LAER that is recorded in the major NSR permit, and subsequently reflected in the federal operating permit.

a. The owner shall not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the LAER determination (e.g., possibly the emissions unit's capacity or throughput).

b. The Clean Unit shall not emit above a level that has been offset.

2. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.

3. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

H. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase (i.e., shall not be used in a "netting analysis"), or be used for generating offsets unless such use occurs before the effective date of the Clean Unit designation, or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then, the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

I. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if an existing Clean Unit designation expires, it shall qualify under the requirements that are currently applicable in the area.

9 VAC 5-80-2142. [Clean unit provisions for emissions units that achieve an emissions limitation comparable to LAER Reserved].

[A. An owner of a major stationary source has the option of using the Clean Unit Test to determine whether emissions increases at a Clean Unit are part of a project that is

a major modification according to the provisions of this section. The provisions of this section apply to emissions units that do not qualify as Clean Units under 9 VAC 5-80-2141, but that are achieving a level of emissions control comparable to LAER, as determined by the board in accordance with this section.

B. The general provisions set forth in this subsection shall apply to a Clean Unit designated under this section.

1. Any project for which the owner begins actual construction after the effective date of the Clean Unit designation (as determined in accordance with subsection E of this section) and before the expiration date (as determined in accordance with subsection F of this section) will be considered to have occurred while the emissions unit was a Clean Unit.

2. If a project at a Clean Unit does not cause the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to LAER, and the project would not alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subdivision H 4 of this section, the emissions unit remains a Clean Unit.

3. If a project causes the need for a change in the emission limitations or work practice requirements in the permit for the unit that have been determined (pursuant to subsection D of this section) to be comparable to LAER, or the project would alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER as specified in subdivision H 4 of this section, then the emissions unit loses its designation as a Clean Unit upon issuance of the necessary permit revisions (unless the unit requalifies as a Clean Unit pursuant to subdivision C 4 of this section). If the owner begins actual construction on the project without first applying to revise the emissions unit's permit, the Clean Unit designation ends immediately prior to the time when actual construction begins.

4. A project that causes an emissions unit to lose its designation as a Clean Unit is subject to the applicability requirements of 9 VAC 5-80-2000 I 1 through 4 and 6 as if the emissions unit were never a Clean Unit.

C. An emissions unit qualifies as a Clean Unit when the unit meets the criteria in subdivisions 1 through 3 of this subsection. After the original Clean Unit designation expires in accordance with subsection F of this section or is lost pursuant to subdivision B 3 of this section, such emissions unit may requalify as a Clean Unit under either subdivision 4 of this subsection, or under the Clean Unit provisions in 9 VAC 5-80-2141. To requalify as a Clean Unit under subdivision 4 of this subsection, the emissions unit shall obtain a new permit issued pursuant to the requirements in subsections G and H of this section and meet all the criteria in subdivision 4 of this subsection. The board will make a

separate Clean Unit designation for each pollutant emitted by the emissions unit for which the emissions unit qualifies as a Clean Unit.

1. Air pollutant emissions from the emissions unit shall be reduced through the use of air pollution control technology (which includes pollution prevention or work practices) that meets both the following requirements:

a. The owner has demonstrated that the emissions unit's control technology is comparable to LAER according to the requirements of subsection D of this section. However, the emissions unit is not eligible for the Clean Unit designation if its emissions are not reduced below the level of a standard, uncontrolled emissions unit of the same type (e.g., if the LAER determinations to which it is compared have resulted in a determination that no control measures are required):

b. The owner made an investment to install the control technology. For the purpose of this determination, an investment includes expenses to research the application of a pollution prevention technique to the emissions unit or to retool the unit to apply a pollution prevention technique.

2. The board will determine that the allowable emissions from the emissions unit will not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) 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. An emissions unit may qualify as a Clean Unit even if the control technology, on which the Clean Unit designation is based, was installed before [the effective date of this revision]. However, for such emissions units, the owner shall apply for the Clean Unit designation within two years after [the effective date of this revision]. For technologies installed after the plan requirements become effective, the owner shall apply for the Clean Unit designation at the time the control technology is installed.

4. In order to requalify as a Clean Unit, the emissions unit shall (i) obtain a new permit (pursuant to subsections G and H of this section) that demonstrates that the emissions unit's control technology is achieving a level of emission control comparable to current day LAER, and (ii) meet the requirements in subdivisions 1 a and 2 of this subsection.

D. The owner may demonstrate that the emissions unit's control technology is comparable to LAER for purposes of subdivision C 1 of this section according to either subdivisions 1 or 2 of this subsection. Subdivision 3 of this subsection specifies the time for making this comparison:

1. The emissions unit's control technology is presumed to be comparable to LAER if it achieves an emission limitation that is at least as stringent as any one of the five best performing similar sources for which a LAER determination has been made within the

preceding five years, and for which information has been entered into the RACT/BACT/LAER Clearinghouse (RBLC). The board will also compare this presumption to any additional LAER determinations of which it is aware, and will consider any information on achieved-in-practice pollution control technologies provided during the public comment period, to determine whether any presumptive determination that the control technology is comparable to LAER is correct.

2. The owner may demonstrate that the emissions unit's control technology is substantially as effective as LAER. In addition, any other person may present evidence related to whether the control technology is substantially as effective as LAER during the public participation process required under subsection G of this section. The board will consider such evidence on a case-by-case basis and determine whether the emissions unit's air pollution control technology is substantially as effective as LAER.

3. The provisions governing the time for making the comparison under this subsection shall be as follows:

a. The owner of an emissions unit whose control technology is installed before [the effective date of this revision] may, at its option, either demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, or demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements. The expiration date of the Clean Unit designation will depend on which option the owner uses, as specified in subsection F of this section.

b. The owner of an emissions unit whose control technology is installed after the effective date of this revision may demonstrate that the emission limitation achieved by the emissions unit's control technology is comparable to current-day LAER requirements.

E. The effective date of an emissions unit's Clean Unit designation (i.e., the date on which the owner may begin to use the Clean Unit Test to determine whether a project involving the emissions unit is a major modification) is the date that the permit required by subsection G of this section is issued or the date that the emissions unit's air pollution control technology is placed into service, whichever is later.

F. If the owner demonstrates that the emission limitation achieved by the emissions unit's control technology is comparable to the LAER requirements that applied at the time the control technology was installed, then the Clean Unit designation expires five years from the date that the control technology was installed. For all other emissions units, the Clean Unit designation expires five years from the effective date of the Clean Unit designation, as determined according to subsection E of this section. In addition, for all emissions units, the Clean Unit designation expires any time the owner fails to comply with the provisions for maintaining the Clean Unit designation in subsection I of this section.

G. The board will designate an emissions unit a Clean Unit only by issuing a permit through an NSR program that includes requirements for public notice of the proposed Clean Unit designation and opportunity for public comment. Such permit shall also meet the requirements of subsection H of this section.

H. The permit required by subsection G of this section shall include the terms and conditions set forth in subdivisions 1 through 6 of this subsection. Such terms and conditions shall be incorporated into the source's federal operating permit in accordance with the provisions of the federal operating permit program, but no later than when the federal operating permit is renewed.

1. A statement indicating that the emissions unit qualifies as a Clean Unit and identifying the pollutants for which this designation applies.

2. If the effective date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the effective date (e.g., the date the control technology is placed into service). Once the effective date is known, then the owner shall notify the board of the exact date. This specific effective date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.

3. If the expiration date of the Clean Unit designation is not known when the board issues the permit (e.g., because the air pollution control technology is not yet in service), then the permit shall describe the event that will determine the expiration date (e.g., the date the control technology is placed into service). Once the expiration date is known, then the owner shall notify the board of the exact date. The expiration date shall be added to the source's federal operating permit at the first opportunity, such as a modification, revision, reopening, or renewal of the federal operating permit for any reason, whichever comes first, but in no case later than the next renewal.

4. All emission limitations and work practice requirements adopted in conjunction with emission limitations necessary to assure that the control technology continues to achieve an emission limitation comparable to LAER, and any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions control comparable to LAER (e.g., possibly the emissions unit's capacity or throughput).

5. Monitoring, recordkeeping, and reporting requirements as necessary to demonstrate that the emissions unit continues to meet the criteria for maintaining its Clean Unit designation (see subsection I of this section.)

6. Terms reflecting the owner's duties to maintain the Clean Unit designation and the consequences of failing to do so, as presented in subsection I of this section.



I. To maintain Clean Unit designation, the owner shall conform to all the restrictions listed in subdivisions 1 through 5 of this subsection. This subsection applies independently to each pollutant for which the board has designated the emissions unit a Clean Unit. That is, failing to conform to the restrictions for one pollutant affects the Clean Unit designation only for that pollutant.

1. The Clean Unit shall comply with the emission limitations and work practice requirements adopted to ensure that the control technology continues to achieve emission control comparable to LAER.

2. The owner may not make a physical change in or change in the method of operation of the Clean Unit that causes the emissions unit to function in a manner that is inconsistent with the physical or operational characteristics that formed the basis for the determination that the control technology is achieving a level of emission control that is comparable to LAER (e.g., possibly the emissions unit's capacity or throughput).

3. The Clean Unit may not emit above a level that has been offset.

4. The Clean Unit shall comply with any terms and conditions in the federal operating permit related to the unit's Clean Unit designation.

5. The Clean Unit shall continue to control emissions using the specific air pollution control technology that was the basis for its Clean Unit designation. If the emissions unit or control technology is replaced, then the Clean Unit designation ends.

J. Emissions changes that occur at a Clean Unit shall not be included in calculating a significant net emissions increase (i.e., shall not be used in a "netting analysis"), or be used for generating offsets unless such use occurs before the effective date of plan requirements adopted to implement this subsection or after the Clean Unit designation expires; or, unless the emissions unit reduces emissions below the level that qualified the unit as a Clean Unit. However, if the Clean Unit reduces emissions below the level that qualified the unit as a Clean Unit, then the owner may generate a credit for the difference between the level that qualified the unit as a Clean Unit and the emissions unit's new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.

K. The Clean Unit designation of an emissions unit is not affected by redesignation of the attainment status of the area in which it is located. If a Clean Unit is located in an attainment area and the area is redesignated to nonattainment, its Clean Unit designation is not affected. Similarly, redesignation from nonattainment to attainment does not affect the Clean Unit designation. However, if a Clean Unit's designation expires or is lost pursuant to 9 VAC 5-80-2141 B 3 and subdivision B 3 of this section, it shall requalify under the requirements that are currently applicable.]

9 VAC 5-80-2143. [Pollution control project (PCP) exclusion Reserved].

[A. Before an owner begins actual construction of a PCP, the owner shall either submit a notice to the board if the project is listed in subdivisions a through f of the definition of "pollution control project," or if the project is not listed in subdivisions a through f of the definition of "pollution control project," then the owner shall submit a permit application and obtain approval to use the PCP exclusion from the board consistent with the requirements in subsection E of this section. Regardless of whether the owner submits a notice or a permit application, the project shall meet the requirements in subsection B of this section, and the notice or permit application shall contain the information required in subsection C of this section.]

B. Any project that relies on the PCP exclusion shall provide the following:

1. The environmental benefit from the emission reductions of pollutants regulated under the federal Clean Air Act shall outweigh the environmental detriment of emissions increases. A statement that a technology from subdivisions a through f of the definition of "pollution control project" is being used shall be presumed to satisfy this requirement.

2. The emissions increases from the project shall not cause or contribute to a violation of any ambient air quality standard or ambient air increment in 9 VAC 5-80-1635, or have an adverse impact on an air quality related value (such as visibility) 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.

C. In the notice or permit application sent to the board, the owner shall include, at a minimum, the following information:

1. A description of the project.

2. The potential emissions increases and decreases of any pollutant regulated under the federal Clean Air Act and the projected emissions increases and decreases using the methodology in 9 VAC 5-80-2000 I, that will result from the project, and a copy of the environmentally beneficial analysis required by subdivision B 1 of this section.

3. A description of monitoring and recordkeeping, and all other methods, to be used on an ongoing basis to demonstrate that the project is environmentally beneficial. Methods should be sufficient to meet the requirements in the federal operating permit program.

4. A certification that the project will be designed and operated in a manner that is consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application.

and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

5. Demonstration that the PCP will not have an adverse air quality impact (e.g., modeling, screening level modeling results, or a statement that the collateral emissions increase is included within the parameters used in the most recent modeling exercise) as required by subdivision B 2 of this section. An air quality impact analysis is not required for any pollutant which will not experience a significant emissions increase as a result of the project.

D. For projects listed in subdivisions a through f of the definition of "pollution control project," the owner may begin actual construction of the project immediately after notice is sent to the board (unless otherwise prohibited under requirements of the applicable implementation plan). The owner shall respond to any requests by the board for additional information that the board determines is necessary to evaluate the suitability of the project for the PCP exclusion.

E. Before an owner begins actual construction of a PCP project that is not listed in subdivisions a through f of the definition of "pollution control project," the project shall be approved by the board and recorded in an NSR permit, state operating permit, or federal operating permit. The permit procedures must include the requirement that the board provide the public with notice of the proposed approval, with access to the environmentally beneficial analysis and the air quality analysis, and provide at least a 30-day period for the public and the administrator to submit comments. The board will address all material comments received by the end of the comment period before taking final action on the permit.

F. Upon installation of the PCP, the owner shall comply with the following operational requirements:

1. The owner shall operate the PCP in a manner consistent with proper industry and engineering practices, in a manner that is consistent with the environmentally beneficial analysis and air quality analysis required by subsection B of this section, with information submitted in the notice or permit application required by subsection C of this section, and in such a way as to minimize, within the physical configuration and operational standards usually associated with the emissions control device or strategy, emissions of collateral pollutants.

2. The owner shall maintain copies on site of the environmentally beneficial analysis, the air quality impacts analysis, and monitoring and other emission records to prove that the PCP operated consistent with the requirements of subdivision 1 of this subsection.

3. The owner shall comply with any provisions in the applicable permit related to use and approval of the PCP exclusion.

~~4. Emission reductions created by a PCP shall not be included in calculating a significant net emissions increase, or be used for generating offsets, unless the emissions unit further reduces emissions after qualifying for the PCP exclusion (e.g., taking an operational restriction on the hours of operation). The owner may generate a credit for the difference between the level of reduction which was used to qualify for the PCP exclusion and the new emission limitation if such reductions are surplus, quantifiable, and permanent. For purposes of generating offsets, the reductions shall also be federally enforceable. For purposes of determining creditable net emissions increases and decreases, the reductions shall also be enforceable as a practical matter.]~~

9VAC5-80-2144. Actuals plantwide applicability limits (PALs)

A. The board may approve the use of an actuals PAL for any existing major stationary source (except as provided in subdivision 1 of this subsection) if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

1. No PAL shall be allowed for VOC or NO<sub>x</sub> for any source located in an extreme ozone nonattainment area.

2. Any physical change in or change in the method of operation of a 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 9VAC5-80-2000 D (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

3. Except as provided under subdivision 2 c of this subsection, a 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 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

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malfunction.

3. The calculation procedures that the 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 source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the 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 rolling average). For each month during the first 11 months from the PAL effective date, the 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.

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

f. Each PAL shall have a PAL effective period of five 10 years.

g. The owner 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, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 9VAC5-80-2120 F through N unless the level

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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 level for the PAL pollutant or under the federal Clean Air Act, whichever is lower. 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.~~ However, a different consecutive 24-month period may be used for each different PAL pollutant. 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 (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<sub>x</sub> 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 an owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective



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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 include emissions from startups, shutdowns and malfunctions.
5. A requirement that, once the PAL expires, the source is subject to the requirements of subsection I of this section.
6. The calculation procedures that the owner shall 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.
7. A requirement that the 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~~ 10 years.

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

1. During the PAL effective period, the board will reopen the PAL permit to:
  - a. Correct typographical and 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 creates creditable emissions reductions for use as offsets under 9VAC5-80-2120 F through N; and
  - c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.

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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 quality standard or ambient air increment in 9VAC5-80-1635, 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 and 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 which 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 timeframe specified for PAL renewals in subdivision J 2 of this section, the 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 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 subsection 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.

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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 (such as source testing or emission factors) 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 source will be subject to the nonattainment major NSR requirements if such change meets the definition of "major modification."

5. The 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 9VAC5-80-2000 D, but were eliminated by the PAL in accordance with the provisions in subdivision A 2 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, and will 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. The 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 six 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 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

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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 subsection.

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 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 its written rationale.

3. Notwithstanding subdivisions 1 and 2 of this subsection:

a. If the potential to emit of the 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 source has complied with the provisions for increasing a PAL under 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

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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 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 source's emissions to equal or exceed its PAL.

b. As part of this application, the 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 10 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 nonattainment major NSR program process (e.g., LAER), 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.

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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 subsection and must be approved by the board.

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

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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

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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 six months of PAL permit issuance, unless the board determines that testing is not required.

7. The 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 subsection, 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 the 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:



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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. Identification of the owner and the permit number.

b. Total annual emissions in 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 source during the preceding six-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.

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2. The 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 9VAC5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9VAC5-80-110 F 2 b. The reports shall contain the following information:

- a. Identification of the owner 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 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 three 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.

9 VAC 5-80-2150. 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 5-80-2160. [Repealed.]

9 VAC 5-80-2170. 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.

9 VAC 5-80-2180. Permit invalidation, suspension, revocation, and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction, ~~reconstruction~~ or modification is not commenced within ~~[the latest of the following time frames:~~

~~\_\_\_\_\_ 1. Eighteen 18] months from the date the permit is granted.~~

~~[2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any government entity.~~

~~3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).]~~

B. A permit granted pursuant to this article shall become invalid if a program of construction, ~~reconstruction~~ or modification is discontinued for a period of 18 months or more or if a program of construction, ~~reconstruction~~ 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 ~~must~~ 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 5-80-2220.

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 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 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 F 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 Part V (9 VAC 5-170-120 et seq.) of 9 VAC 5 Chapter 170 and the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia).

J. The board shall 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 5-80-2190. 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.

9 VAC 5-80-2200. Changes to permits.

A. The general requirements for making changes to permits [issued under this article] are as follows:

1. [Changes 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 5-80-2210 through 9 VAC 5-80-2240.

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.

4. ~~[This section shall not be applicable to general permits. Under no circumstances may a permit issued under this article be changed in order to (i) incorporate the terms and conditions necessary to implement any provision of the new source review program for a project that qualifies as a modification under the new source review program or (ii) incorporate the terms and conditions necessary to implement any provision of the new source review program for a PAL permit.]~~

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 ~~[revisions~~ changes] can be found in 9 VAC 5-80-2210 through 9 VAC 5-80-2230.

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 5-80-2240.

9 VAC 5-80-2210. 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 that 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.

~~[4. The combining of permits under the new source review program as provided in 9 VAC 5-80-2020 C.]~~

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 ~~shall~~ will incorporate the changes without providing notice to the public under 9 VAC 5-80-2070. 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 5-80-2220. 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 emission limitation or other standard;

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:

~~\_\_\_\_\_ a. An, but are not limited to, an] emissions cap assumed to avoid classification as a modification under the new source review program [or § 112 of the federal Clean Air Act; and~~

~~\_\_\_\_\_ b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act];~~

5. ~~[Are not modifications under the new source review program]; and~~

~~\_\_\_\_\_ 6.] Are not required to be processed as a significant amendment under 9 VAC 5-80-2230; or as an administrative permit amendment under 9 VAC 5-80-2210.~~

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 more frequent monitoring or reporting by the permittee [~~or to reduce the level of an emissions cap~~].

3. Designate any term or permit condition that meets the criteria in 9 VAC 5-80-2020 E 1 as state-only enforceable as provided in 9 VAC 5-80-2020 E 2 for any permit issued under this article or any regulation from which this article is derived.

C. [~~Notwithstanding subsection A of this section, minor~~ 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 and 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 all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A request that such procedures be used.

E. The public participation requirements of 9 VAC 5-80-2070 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 terms and conditions.

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. 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 5-80-2230. 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 5-80-2220 or as administrative amendments under 9 VAC 5-80-2210.

2. Significant amendment procedures shall be used for those permit amendments that meet any one 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 record keeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

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[:

\_\_\_\_\_ (1) An emissions cap, but are not limited to, an] emissions cap assumed to avoid classification as a modification under the new source review program [~~or § 112 of the federal Clean Air Act~~; and

\_\_\_\_\_ (2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act].

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 his discretion, include a suggested draft permit amendment.

C. The provisions of 9 VAC 5-80-2070 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 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 9 VAC 5-80-2070.

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 5-80-2240. 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~~ shall ~~must~~ be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.

~~[4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.]~~

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.