TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. In addition, the State Air Pollution Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-20. General Provisions (Rev. B16) (amending 9VAC5-20-180).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110 and 182 of the federal Clean Air Act; 40 CFR Part 51.

Effective Date: June 1, 2016.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

On June 12, 2015 (80 FR 33840), the U.S. Environmental Protection Agency (EPA) issued a final State Implementation Plan (SIP) call concerning treatment of excess emissions in state rules by sources during periods of startup, shutdown, or malfunction (SSM), including Virginia's SSM rules at 9VAC5-20-180 G. The U.S. Court of Appeals for the District of Columbia Circuit in 2014 held that such provisions are illegal, and state plans must be amended accordingly. Essentially, EPA finds that 9VAC5-20-180 G as currently drafted creates an impermissible affirmative defense for violations of emission limits, therefore the amendments to this section remove the provisions allowing an affirmative defense.

9VAC5-20-180. Facility and control equipment maintenance or malfunction.

A. The provisions of this section apply to periods of excess emissions resulting from (i) the shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance and (ii) malfunctions or other equipment failures of any affected facility or related air pollution control equipment.

B. In case of shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance which results in excess emissions for more than one hour, the intent to shut down such equipment shall be reported to the board and local air pollution control agency, if any, at least 24 hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:

1. Identification of the specific facility to be taken out of service as well as its location and permit or registration number;

2. The expected length of time that the air pollution control equipment will be out of service;

3. The nature and quantity of emissions of air pollutants likely to occur during the shutdown period; and

4. Measures that will be taken to minimize the length of the shutdown and to negate the effect of the outage of the air pollution control equipment.

C. In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than one hour, the owner shall~~, as soon as practicable but~~ (i) no later than four daytime business hours after the malfunction is discovered~~,~~ notify the board ~~by facsimile transmission, telephone or telegraph~~ of such failure or malfunction and ~~shall~~ (ii) within ~~two weeks~~ 14 days provide a written statement giving all pertinent facts, including the estimated duration of the breakdown and the demonstrations in subsection G of this section. Owners subject to the requirements of 9VAC5-40-50 C and 9VAC5-50-50 C are not required to provide the written statement prescribed in this subsection for facilities subject to the monitoring requirements of 9VAC5-40-40 and 9VAC5-50-40. When the condition causing the failure or malfunction has been corrected and the facility or control equipment is again in operation, the owner shall notify the board.

D. In the event that the breakdown period cited in subsection C of this section exists or is expected to exist for 30 days or more, the owner shall, as expeditiously as possible but no later than 30 days after the failure or malfunction and semi-monthly thereafter until the failure or malfunction is

corrected, submit to the board a written report containing the following:

1. Identification of the specific facility that is affected as well as its location and permit or registration number;

2. The expected length of time that the air pollution control equipment will be out of service;

3. The nature and quantity of air pollutant emissions likely to occur during the breakdown period;

4. Measures to be taken to reduce emissions to the lowest amount practicable during the breakdown period;

5. A statement as to why the owner was unable to obtain repair parts or perform repairs which would allow compliance with the Regulations for the Control and Abatement of Air Pollution within 30 days of the malfunction or failure;

6. An estimate, with reasons given, of the duration of the shortage of repairs or repair parts which would allow compliance with the Regulations for the Control and Abatement of Air Pollution; and

7. Any other pertinent information as may be requested by the board.

F. The following special provisions govern facilities which are subject to the provisions of Article 5 (9VAC5-50-400 et seq.) of Part II of ~~9VAC5 Chapter 50,~~ 9VAC5-50 or Article 1 (9VAC5-60-60 et seq.) ~~of 9VAC5 Chapter 60,~~ or Article 2 (9VAC5-60-90 et seq.) of ~~9VAC5 Chapter 60~~ Part II of 9VAC5-60:

1. For sources subject to the applicable subparts listed in 9VAC5-50-410, any provisions governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 60, the more restrictive provisions shall apply.

2. For sources subject to the applicable subparts listed in 9VAC5-60-70, any provisions governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 61, the more restrictive provisions shall apply.

3. For sources subject to the applicable subparts listed in 9VAC5-60-100, any provisions governing malfunctions shall be implemented through this section. In cases where there are differences between the provisions of this section and the provisions of 40 CFR Part 63, the more restrictive provisions shall apply.

G. ~~No violation of applicable emission standards or monitoring requirements shall be judged to have taken place~~ In accordance with subsection C of this section, if the excess emissions or cessation of monitoring activities is due to a malfunction, ~~provided that~~ the owner may demonstrate the following:

1. The cause of the excess emissions or cessation of monitoring activities meets the definition of malfunction provided in 9VAC5-10-20;

~~1.~~ 2. The procedural requirements of this section were met or the owner has submitted an acceptable application for a variance, which is subsequently granted;

~~2.~~ 3. The owner has taken expeditious and reasonable measures to minimize emissions during the breakdown period;

~~3.~~ 4. The owner has taken expeditious and reasonable measures to correct the malfunction and return the facility to a normal operation; and

~~4.~~ 5. The source is in compliance with related applicable emission standards or monitoring requirements at least 90% of the operating time over the most recent 12-month period.

H. Nothing in this section shall be construed as giving an owner the right to increase temporarily the emission of pollutants or to circumvent the emission standards or monitoring requirements otherwise provided in the Regulations for the Control and Abatement of Air Pollution.

I. Regardless of any other provision of this section, the owner of any facility subject to the Regulations for the Control and Abatement of Air Pollution shall, upon request of the board, reduce the level of operation at the facility if the board determines that this is necessary to prevent a violation of any primary ambient air quality standard. Under worst case conditions, the board may order that the owner shut down the facility~~,~~ if there is no other method of operation to avoid a violation of the primary ambient air quality standard. The board reserves the right to prescribe the method of determining if a facility will cause such a violation. In such cases, the facility shall not be returned to operation until it and the associated air pollution control equipment are able to operate without violation of any primary ambient air quality standard.

J. Any owner of an affected facility subject to the provisions of this section shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment that results in excess emissions for more than one hour. The records shall be maintained in a form suitable for inspection and maintained for at least two years (unless a longer period is specified in the applicable emission standard) following the date of the occurrence.

VA.R. Doc. No. R16-4598; Filed March 31, 2016, 11:04 a.m.

Revision D97

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

REGISTRAR'S NOTICE: Revision D97 was first published in final version in 16:17 VA.R. 2135-2188 May 8, 2000; however, the amendments to the regulations were suspended pursuant to § 2.2-4007 J of the Code of Virginia in 16:20 VA.R. 2465-2467 June 19, 2000. The changes made since the 16:17 publication are shown in brackets.

Title of Regulation: **Regulations for the Control and Abatement of Air Pollution: Special Provisions for Existing Sources, New and Modified Sources, and Hazardous Air Pollutant Sources (Rev. D97).**

9 VAC 5-10-10 et seq. General Definitions (amending [*9 VAC 5-10-10 and*] 9 VAC 5-10-20).

9 VAC 5-20-10 et seq. General Provisions (amending 9 VAC 5-20-180).

9 VAC 5-40-10 et seq. Existing Stationary Sources (amending 9 VAC 5-40-10, 9 VAC 5-40-20, 9 VAC 5-40-30, 9 VAC 5-40-40, and 9 VAC 5-40-50).

9 VAC 5-50-10 et seq. New and Modified Stationary Sources (amending 9 VAC 5-50-10, 9 VAC 5-50-20, 9 VAC 5-50-30, 9 VAC 5-50-40, and 9 VAC 5-50-50).

9 VAC 5-60-10 et seq. Hazardous Air Pollutant Sources (amending 9 VAC 5-60-10, 9 VAC 5-60-20, and 9 VAC 5-60-30).

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Effective Date: August 1, 2002.

Summary:

The first final regulation was adopted on March 30, 2000, and published in Volume 16, Issue 17 of the Virginia Register. In consideration of the substantive changes made to the final, the agency suspended the effective date and conducted additional public participation activities. This second final contains a number of changes, but the primary changes return the regulation to use the no violation approach (if certain conditions are met) to address excess emissions during periods of startup, shutdown and malfunction (SSM) in lieu of the EPA approach whereby sources would be in violation for these excess emissions during periods of SSM but the sources could put forth an affirmative defense if certain conditions were met and avoid penalties.

Special provisions are contained in several locations throughout the regulations as follows: Existing Sources, Chapter, 40 Part I; New and Modified Sources, Chapter 50, Part I; and Hazardous Air Pollutant Sources, Chapter 60, Part I. The special provisions address such issues such as: applicability, compliance, emission testing, monitoring, notification, records and reporting. Provisions relating to maintenance and malfunction of facility control and monitoring equipment are found in 9 VAC 5-20-180. The amendments:

1. Update requirements related to source surveillance (compliance, emission testing, monitoring, notification, records and reporting) to be consistent with new federal requirements and EPA policy;

2. Allow for the submittal of information electronically upon mutual consent by owner and Board, except for documents requiring signature or certifications;

3. Address concerns relating to maintenance and malfunction of facility control and monitoring equipment identified pursuant to the review of existing regulations mandated by Executive Order 15(94); and

4. Allow the general provisions of 40 CFR Parts 60, 61 and 63 to be implemented under the authority of the state regulations.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Alma Jenkins, Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4070.

CHAPTER 20.
GENERAL PROVISIONS.

9 VAC 5-20-180. Facility and control equipment maintenance or malfunction.

A. ~~At all times, including periods of startup, shutdown and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility, including associated air pollution control equipment or monitoring equipment, in a manner consistent with good air pollution control practice of minimizing emissions.~~ *The provisions of this section apply to periods of excess emissions resulting from (i) the shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance and (ii) malfunctions or other equipment failures of any affected facility or related air pollution control equipment.* [~~*The provisions of subsection G of this section shall not apply to the following:*~~

~~*1. Sources subject to the applicable subparts listed in 9 VAC 5-50-410 unless specifically allowed by the applicable subparts listed in 9 VAC 5-50-410.*~~

~~*2. Sources subject to the applicable subparts listed in 9 VAC 5-60-70 unless specifically allowed by the applicable subparts listed in 9 VAC 5-60-70.*~~

~~*3. Sources subject to the applicable subparts listed in 9 VAC 5-60-100 unless specifically allowed by the applicable subparts listed in 9 VAC 5-60-100.*~~

~~*4. Sources and pollutants in areas where a single source or small group of sources has the potential to cause an exceedance of any ambient air quality standard or any ambient air increment prescribed under 9 VAC 5-80-1730.*~~

~~*5. Affected units subject to a federal operating permit unless specifically allowed by the permit. This prohibition applies only to terms and conditions of the permit derived from the acid rain program.*~~]

B. In case of shutdown or bypassing, or both, of air pollution control equipment for necessary scheduled maintenance which results in excess emissions for more than one hour, the intent to shut down such equipment shall be reported to the board and local air pollution control agency, if any, at least 24 hours prior to the planned shutdown. Such prior notice shall include, but is not limited to, the following:

1. Identification of the specific facility to be taken out of service as well as its location and permit or registration number;

2. The expected length of time that the air pollution control equipment will be out of service;

3. The nature and quantity of emissions of air pollutants likely to occur during the shutdown period; and

4. Measures that will be taken to minimize the length of the shutdown ~~or~~ *and* to negate the effect of the outage of the air pollution control equipment.

C. In the event that any affected facility or related air pollution control equipment fails or malfunctions in such a manner that may cause excess emissions for more than one hour, the owner shall, as soon as practicable but no later than [four ~~six~~] daytime business hours *after the malfunction is discovered*, notify the board by facsimile transmission, telephone or telegraph of such failure or malfunction and shall within two weeks provide a written statement giving all pertinent facts, including the estimated duration of the breakdown. Owners subject to the requirements of 9 VAC 5-40-50 C and 9 VAC 5-50-50 C are not required to provide the written statement prescribed in this ~~paragraph~~ *subsection* for facilities subject to the monitoring requirements of 9 VAC 5-40-40 and 9 VAC 5-50-40. When the condition causing the failure or malfunction has been corrected and the *facility or control* equipment is again in operation, the owner shall notify the board.

D. In the event that the breakdown period cited in subsection C of this section exists or is expected to exist for 30 days or more, the owner shall, ~~within 30 days of~~ *as expeditiously as possible but no later than 30 days after* the failure or malfunction and semi-monthly thereafter until the failure or malfunction is corrected, submit to the board a written report containing the following:

1. Identification of the specific facility that is affected as well as its location and permit or registration number;

2. The expected length of time that the air pollution control equipment will be out of service;

3. The nature and quantity of air pollutant emissions likely to occur during the breakdown period;

4. Measures to be taken to reduce emissions to the lowest amount practicable during the breakdown period;

5. A statement as to why the owner was unable to obtain repair parts or perform repairs which would allow compliance with the ~~provisions of these regulations~~ *Regulations for the Control and Abatement of Air Pollution* within 30 days of the malfunction or failure;

6. An estimate, with reasons given, of the duration of the shortage of repairs or repair parts which would allow compliance with the ~~provisions of these regulations~~ *Regulations for the Control and Abatement of Air Pollution*; and

7. Any other pertinent information as may be requested by the board.

H. Nothing in this section shall be construed as giving an owner the right to increase temporarily the emission of pollutants or to circumvent the emission standards or monitoring requirements otherwise provided in ~~these regulations~~ *the Regulations for the Control and Abatement of Air Pollution.*

I. Regardless of any other provision of this section, the owner of any facility subject to the ~~provisions of these regulations~~ *Regulations for the Control and Abatement of Air Pollution* shall, upon request of the board, reduce the level of operation at the facility if the board determines that this is necessary to prevent a violation of any [primary] ambient air quality standard [~~*or any ambient air increment prescribed under 9 VAC 5-80-1730*~~]. Under worst case conditions, the board may order that the owner shut down the facility, if there is no other method of operation to avoid a violation of the [primary] ambient air quality standard [~~*or any ambient air increment prescribed under 9 VAC 5-80-1730*~~]. The board reserves the right to prescribe the method of determining if a facility will cause such a violation. In such cases, the facility shall not be returned to operation until it and the associated air pollution control equipment are able to operate without violation of any [primary] ambient air quality standard [~~*or any ambient air increment prescribed under 9 VAC 5-80-1730*~~] .

J. Any owner of an affected facility subject to the provisions of this section shall maintain records of the occurrence and duration of any bypass, malfunction, shutdown or failure of the facility or its associated air pollution control equipment that results in excess emissions for more than one hour. The records shall be maintained in a form suitable for inspection and maintained for at least two years [*(unless a longer period is specified in the applicable emission standard)*] following the date of the occurrence.

VA.R. Doc. No. R97-708; Filed June 11, 2002, 12:22 p.m.

Final Regulation

Title of Regulation: **9VAC5-40. Existing Stationary Sources (Rev. C09) (amending 9VAC5-40-7800; adding 9VAC5-40-8380 through 9VAC5-40-8480).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the federal Clean Air Act (40 CFR Parts 51 and 60).

Effective Date: February 1, 2016.

Agency Contact: Gary Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gary.graham@deq.virginia.gov.

Summary:

The regulation requires owners to limit emissions from offset lithographic printing operations and letterpress printing operations to the level necessary for the protection of public health and welfare and the attainment and maintenance of the air quality standards. The regulation applies to sources within the Northern Virginia Volatile Organic Compound Emissions Control Area and establishes standards, control techniques, and provisions for determining compliance. The regulation also includes provisions for visible emissions, fugitive dust, odor, toxic pollutants, compliance, test methods and procedures, monitoring, notification, registration, malfunctions, and permits.

Changes since publication of the proposed regulation include revising the conditions under which performance testing would be conducted, adding default retention factors and capture efficiencies, adding a provision to allow an exemption of a certain amount of cleaning materials, and correcting definitions and standards to conform to the new control techniques guidelines.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Article 56
Emission Standards for Letterpress Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-56)

9VAC5-40-8416. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

Article 56.1
Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-56.1)

9VAC5-40-8470. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

VA.R. Doc. No. R10-2126; Filed October 29, 2015, 11:50 a.m.

Final Regulation

Title of Regulation: **9VAC5-40. Existing Stationary Sources (Rev. D09) (adding 9VAC5-40-8510 through 9VAC5-40-8800).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the federal Clean Air Act (40 CFR Parts 51 and 60).

Effective Date: February 1, 2016.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The regulation requires owners to limit emissions of air pollution from industrial solvent cleaning operations and miscellaneous industrial adhesive application processes to the level necessary for the protection of public health and welfare and the attainment and maintenance of the air quality standards. The regulation applies to sources within the Northern Virginia Volatile Organic Compound Emissions Control Area and establishes standards, control techniques, and provisions for determining compliance. The regulation includes provisions for visible emissions, fugitive dust, odor, toxic pollutants, compliance, test methods and procedures, monitoring, notification, registration, malfunctions, and permits. The final amendments add an alternative work practices procedure and an alternative standard for coatings, inks, adhesives, and resin manufacturing operations.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Article 57
Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-57)

9VAC5-40-8640. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

Article 58
Emission Standards for Miscellaneous Industrial Adhesive Application Processes in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-58)

9VAC5-40-8790. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

VA.R. Doc. No. R10-2124; Filed October 29, 2015, 11:48 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

Titles of Regulations: **9VAC5-20. General Provisions (Rev. E09) (amending 9VAC5-20-21).**

9VAC5-40. Existing Stationary Sources (Rev. E09) (amending 9VAC5-40-4760; adding 9VAC5-40-8810 through 9VAC5-40-8950).

Statutory Authority: § 10.1-1308 of the Code of Virginia; §§ 110, 111, 123, 129, 171, 172, and 182 of the federal Clean Air Act (40 CFR Parts 51 and 60).

Effective Date: February 1, 2016.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Summary:

The regulation requires owners to limit emissions of air pollution from miscellaneous metal and plastic parts coating operations to the level necessary for the protection of public health and welfare and the attainment and maintenance of the air quality standards. The regulation applies to sources within the Northern Virginia Volatile Organic Compound Emissions Control Area and establishes standards, control techniques, and provisions for determining compliance. The regulation also includes provisions for visible emissions, fugitive dust, odor, toxic pollutants, compliance, test methods and procedures, monitoring, notification, registration, malfunctions, and permits.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Article 59
Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area. 8-hour Ozone Standard (Rule 4-59)

9VAC5-40-8940. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and Control Equipment Maintenance or Malfunction) apply.

VA.R. Doc. No. R10-2125; Filed October 29, 2015, 11:49 a.m.