

COMMONWEALTH OF VIRGINIA
STATE AIR POLLUTION CONTROL BOARD

9VAC5 CHAPTER 170.
REGULATION FOR GENERAL ADMINISTRATION.

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PART I.

DEFINITIONS.

9VAC5-170-10. Use of terms.

A. For the purpose of this chapter and subsequent amendments to it, of regulations of the board, or of orders issued by the department, the words or terms shall have the meanings given them in 9VAC5-170-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in the regulations of the board, terms used shall have the meanings commonly ascribed to them by recognized authorities.

9VAC5-170-20. Terms defined.

"Administrative proceeding" means an informal fact finding or formal hearing.

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances that are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or that unreasonably interfere with the enjoyment by the people of life or property.

"Board" means the State Air Pollution Control Board or its designated representative. When used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "board" means the Department of Environmental Quality.

"Case decision" means any determination that a named party as a matter of past or present fact, or as a matter of threatened or contemplated private action, either is or is not, or may or may not be (i) in violation of any law or regulations, or (ii) in compliance with any existing requirement for obtaining or retaining a permit or other right or benefit. Case decisions include, but are not limited to, consent orders, consent agreements, orders, special orders, emergency special orders, permits, waivers, and licenses. Case decisions do not include notices of violations, variances, regulations, or inspection reports.

"Confidential information" means secret formulae, secret processes, secret methods or other trade secrets that are proprietary information certified by the signature of the responsible person for the owner to meet the following criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality, (ii) information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial

or quasi-judicial proceeding, (iii) information that is not publicly available from sources other than the owner, and (iv) information the disclosure of which would cause substantial harm to the owner.

"Consent agreement" means an agreement that the owner or another person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with the regulations of the board, by mutual agreement of the owner or another person and the department.

"Consent order" means a consent agreement issued as an order. Consent orders may be issued without a formal hearing.

"Department" means an employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Disclosure form" means the financial statement required by § 2.2-3114 of the State and Local Government Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia).

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety, or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural, or other reasonable use.

"Emergency special order" means an order of the department issued under the provisions of § 10.1-1309 B of the Code of Virginia, after declaring a state of emergency and without a formal hearing, to owners who are permitting or causing air pollution to cease the pollution. These orders shall become invalid if a formal hearing is not held within 10 days after the effective date.

"Enabling law" or "enabling laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing the board to make regulations or the department to decide cases or containing procedural requirements therefor, including, but not limited to, the (i) Virginia Air Pollution Control Law and (ii) the Virginia Motor Vehicle Emissions Control Law.

"Evidentiary hearing" means a formal proceeding that provides opportunity for interested persons to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Administrative Process Act in connection with the making of regulations. Evidentiary hearings do not include the informational inquiries of an informal nature provided in § 2.2-4007.01 B of the Administrative Process Act.

"Federal Clean Air Act" means 42 USC 7401 et seq., 91 Stat 685.

"Formal hearing" means a formal proceeding that provides for the right of private parties to submit factual proofs as provided in § 2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 2.2-4019 of the Administrative Process Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 2.2-4019 of the Administrative Process Act.

"Locality" means a city, town, county, or other public body created by or pursuant to state law.

"Order" means a decision or directive of the department, including special orders, emergency special orders, and other orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of the regulations of the board. Unless specified otherwise in the Virginia Air Pollution Control Law or in the regulations of the board, orders shall be issued only after the appropriate administrative proceeding.

"Owner" means a person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

"Party" means, for the purposes of Part VIII (9VAC5-170-190 et seq.), a person named in the record who actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or another legal entity.

"Pollutant" means a substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare, or safety; to animal or plant life; or to property; or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential conflict of interest" means a personal interest as defined in § 2.2-3101 of the State and Local Government Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia).

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007.01 B of the Administrative Process Act, held to afford people an opportunity to submit views and data relative to a matter on which a decision of the board or the department is pending.

"Public meeting" means an informal proceeding conducted by the department in conjunction with the notice of intended regulatory action to afford people an opportunity to submit comments relative to intended regulatory actions.

"Public participation process" means any element of a board or department decision making process that involves the use of a public meeting, public hearing, or evidentiary hearing.

"Regulations of the board" means regulations adopted by the State Air Pollution Control Board under a provision of the Code of Virginia.

"Source" means one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances that contribute, or may contribute, either directly or indirectly to air pollution. An activity by a person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Special order" means an order of the department issued:

1. Under the provisions of § 10.1-1309 of the Code of Virginia:

a. To owners who are permitting or causing air pollution to cease and desist from the pollution;

b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the department, to construct facilities in accordance with or otherwise comply with the approved plan;

c. To owners who have violated or failed to comply with the terms and provisions of an order or directive issued by the department to comply with the terms and provisions;

d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and

e. To require an owner to comply with the provisions of the Virginia Air Pollution Control Law and a decision of the department; or

2. Under the provisions of § 10.1-1309.1 of the Code of Virginia, which require that an owner file with the department a plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the environment that is reasonably likely to occur if the source ceases operations.

"Variance" means the temporary exemption of an owner or other person from the regulations of the board, or a temporary change in the regulations of the board as they apply to an owner or other person.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Virginia Register Act" means Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia.

PART II. GENERAL PROVISIONS.

9VAC5-170-30. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of this chapter, unless specified otherwise, shall apply in the administration of all regulations of the board to the extent not covered in a specific regulation of the board. In cases where the provisions of this chapter conflict with another regulation of the board, the provisions of the other regulation shall apply.

C. No provision of this chapter shall limit the power of the department to take appropriate action as necessary to control and abate air pollution in emergency situations.

9VAC5-170-40. Hearings and proceedings.

A. Four types of proceedings are used in the administration of the following programs.

1. A public hearing is held in each of two situations, as explained below.

a. A public hearing is required before considering regulations, in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 2.2-4007.01 B of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to 9VAC5-5 (Public Participation Guidelines).

b. A public hearing is required before considering variances and amendments to and revocation of variances, in accordance with § 10.1-1307 C of the

Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9VAC5-170-140.

2. An informal fact finding is used to negotiate and to make case decisions. The procedure for an informal fact finding shall conform to § 2.2-4019 of the Administrative Process Act.

3. A formal hearing is held in each of two situations.

a. A formal hearing is held for the enforcement or review of orders and permits and for the enforcement of regulations, in accordance with § 10.1-1307 D and § 10.1-1322 A of the Virginia Air Pollution Control Law. The procedures for this type of hearing shall conform to § 2.2-4020 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

b. A formal hearing is held for special orders or emergency special orders for the enforcement or review of orders and permits and for the enforcement of regulations, in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for this type of hearing shall conform to § 2.2-4020 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.

4. An evidentiary hearing may be held for the making of regulations. The procedure for this type of hearing shall conform to § 2.2-4009 of the Administrative Process Act.

B. The department may adopt policies and procedures to supplement the statutory procedural requirements for the various hearings and proceedings cited in subdivisions A 1, A 2, and A 3 of this section.

C. Records of hearings and proceedings may be kept in one of the following forms:

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

2. Oral statements or testimony at an informal fact finding will be stenographically or electronically recorded, and may be transcribed to written form.

3. Formal hearings and evidentiary hearings will be recorded by a court reporter or electronically recorded for transcription to written form.

D. Availability of records of hearings and proceedings shall be as follows:

1. A copy of the electronic recording or the transcript of a public hearing, if

transcribed, will be provided within a reasonable time to anyone upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. A copy of the electronic recording or the transcript of an informal fact finding, if transcribed, will be provided within a reasonable time to anyone upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

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

9VAC5-170-50. Policy and procedural information and guidance.

A. The director may adopt detailed policies and procedures which:

1. Request data and information in addition to and in amplification of the provisions of the regulations of the board;

2. Specify the methods and means that may be used to determine compliance with applicable provisions of the regulations of the board;

3. Set forth the format by which all data and information should be submitted; and

4. Set forth how the regulatory programs should be implemented.

B. In cases where the regulations of the board specify that procedures or methods shall be approved by, acceptable to or determined by the board or other similar phrasing, such phrasing shall be interpreted such as consistent with the Air Pollution Control Law of Virginia, Code of Virginia (§ 10.1-1300 et seq. of the Code of Virginia). The owner may request information and guidance concerning the proper procedures and methods, and the director shall furnish in writing such information on a case-by-case basis.

9VAC5-170-60. Availability of information.

A. Emission data in the possession of the department will be available to the public without exception.

B. Other records, reports, or information in the possession of the department shall be available to the public with the following exception. The department shall consider records, reports, or information confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory to

the department by an owner that records, reports, or information meet the criteria in subsection C of this section and the owner provides a certification to that effect signed by a responsible representative of the owner. Records, reports or information may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.

C. In order to be exempt from disclosure to the public under subsection B of this section, the record, report or information must satisfy the following criteria:

1. Information for which the owner has been taking and will continue to take measures to protect confidentiality;
2. Information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;
3. Information which is not publicly available from sources other than the owner; and
4. Information the disclosure of which would cause substantial harm to the owner.

D. The department shall have the right to substitute information which is not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. Upon approval of the department, an owner may substitute information which is not confidential for information claimed as confidential. Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the department as the information for which the inquiry is made.

E. The responsible representative of the owner who certifies information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.

9VAC5-170-70. (Repealed.)

PART III. REGULATIONS AND ORDERS.

9VAC5-170-80. Establishment of regulations and orders.

A. Regulations of the board shall be adopted, amended or repealed in accordance with the provisions of the enabling laws, Articles 1 (§ 2.2-4000 et seq.) and 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, and 9VAC5-5 (Public

Participation Guidelines).

B. Regulations, amendments, and repeals shall become effective as provided in § 2.2-4015 of the Administrative Process Act.

C. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under § 2.2-4011 of the Administrative Process Act, but the regulation shall remain effective no longer than one year unless readopted following the requirements of subsection A of this section. The provisions of this subsection are not applicable to emergency special orders of the department; these orders are subject to the provisions of subsection E of this section.

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

1. United States Code.
2. Code of Virginia.
3. Code of Federal Regulations.
4. Federal Register.
5. Technical and scientific reference documents.

Additional information on specific documents which have been incorporated by reference and on the availability of these documents may be found in the specific regulations of the board which incorporate the documents.

E. Orders, special orders, and emergency special orders may be issued pursuant to § 10.1-1307 D, § 10.1-1309, or § 10.1-1309.1 of the Virginia Air Pollution Control Law.

PART IV. REPEALED.

9VAC5-170-90. Repealed.

9VAC5-170-100. Repealed.

9VAC5-170-110. Repealed.

PART V. ENFORCEMENT.

9VAC5-170-120. Enforcement of regulations, permits, and orders.

A. As provided in § 10.1-1186(10) of the Code of Virginia, the director has independent authority to compel compliance with the Virginia Air Pollution Control Law, regulations of the board, permits, certifications, and case decisions. However, whenever the director has reason to believe that a violation of any provision of the regulations of the board or a permit or order has occurred, he may serve notice on the suspected violator, citing the applicable provision of the regulations of the board, permit, or order and the facts on which the suspected violation is based. The director may obtain compliance through one of the enforcement proceedings provided in subdivisions 1 and 2 of this subsection.

1. The director may obtain compliance through administrative means. These means may be a variance, order, special order, control program, consent agreement, or another mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance.

2. The director may obtain compliance through legal means pursuant to § 10.1-1307.3, § 10.1-1316, or § 10.1-1320 of the Virginia Air Pollution Control Law.

B. Nothing in this section shall prevent the director from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.

C. Orders, consent orders, delayed compliance orders, special orders, and emergency special orders are considered administrative means, and the department reserves the right to use these means in lieu of or to provide a legal basis for the enforcement of administrative means approved by the director under subsection A of this section.

D. Case decisions regarding the enforcement of regulations, orders, and permits shall be made by the director. Case decisions of the director that are made pursuant to a formal hearing may be regarded as a final decision and appealed pursuant to 9VAC5-170-200 D, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the director that are made pursuant to an informal fact finding may be appealed pursuant to 9VAC5-170-200 A.

9VAC5-170-130. Right of entry.

A. Whenever it is necessary for the purposes of the regulations of the board, the department or an agent authorized by the department may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10.1-1315 or § 46.2-1187.1 of the Code of Virginia.

B. Upon the procurement of an inspection warrant signed by a judge of the circuit

court whose territorial jurisdiction encompasses the property or premises to be inspected or entered, the department or an agent authorized by the department may enter any property or premises and conduct any inspection, testing, or collection of samples for testing required or authorized by state law or regulation in connection with the manufacturing, emitting, or presence of a toxic substance, as authorized by § 19.2-393 et seq. of the Code of Virginia.

PART VI.
VARIANCES, ORDINANCES, AND APPROVALS.

9VAC5-170-140. Variances.

A. Pursuant to § 10.1-1307 C of the Virginia Air Pollution Control Law, the department may grant local variances to a provision of the regulations of the board after an investigation and public hearing; except that no local variances shall be granted from regulations adopted by the board pursuant to § 10.1-1308 of the Code of Virginia related to the requirements of subsection E of § 10.1-1308 of the Code of Virginia or Article 4 (§10.1-1329 et seq.) of Chapter 13 of Title 10.1 of the Code of Virginia. If a local variance is appropriate, the department shall issue an order to this effect. The order shall be subject to amendment or revocation at any time.

B. The department shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the affected area of the subject, date, time, and place of the public hearing at least 30 days prior to the scheduled hearing.

C. The public participation procedures of § 10.1-1307.01 of the Virginia Air Pollution Control Law shall be followed in the consideration of variances.

D. Notwithstanding the requirements of subsection B of this section, if the department finds that there is a locality particularly affected by a variance involving (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to

be used; (iv) advise the public as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality.

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the department for at least 30 days after any hearing on such variance or permit, unless the director chooses to shorten the period.

9VAC5-170-150. Local ordinances.

A. Local ordinances shall be established and approved as follows:

1. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution shall first obtain the approval of the department as to the provisions of the ordinance or amendment. Except for an ordinance or amendment pertaining solely to open burning, the department will not approve an ordinance or amendment that regulates an emission source that is required to register with the department or to obtain a permit pursuant to Virginia Air Pollution Control Law and the regulations of the board. The department in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

2. Approval of a local ordinance shall be withdrawn if the department determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to

state regulations, the local amendment will be made within six months. If the necessary amendment is not made within six months, the department may rescind its approval of the ordinance.

B. Local ordinances shall provide for reporting information required by the department to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Reports shall include, but are not limited to monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings, and status of control programs and permits.

C. Local ordinances are a supplement to state regulations. Provisions of local ordinances which have been approved by the department and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the department to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The department will also provide technical and other assistance to local authorities in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The department emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the department reserves the right to enforce state regulations.

D. A local governing body may grant a variance to a provision of its air pollution control ordinance provided that:

1. A public hearing is held by the locality prior to granting the variance;
2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation in the affected locality and a major newspaper of general circulation in the state capital area at least 30 days prior to the date of the public hearing by the locality; and
3. The variance does not permit an owner or other person to take action that would result in a violation of a provision of state regulations unless a variance is granted by the department. The local public hearing required for the variances to the local ordinance and the public hearing required under state regulations may be conducted jointly as one proceeding.

E. This section shall not apply to the approval of local ordinances concerning open burning established pursuant to 9VAC5-40-5645 D.

9VAC5-170-160. Conditions on approvals.

A. The department may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise

specified, nothing in this chapter shall be understood to limit the power of the department in this regard. If the owner or other person fails to adhere to the conditions, the department may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.

B. An owner may consider a condition imposed by the department as a denial of the requested approval or permit, which shall entitle the applicant to appeal the decision of the department pursuant to 9VAC5-170-200.

9VAC5-170-170. Considerations for approval actions.

Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board, in making regulations and the department in approving variances, control programs, or permits, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located, except that consideration of this factor shall be satisfied if the local governing body of a locality in which a facility or activity is proposed has resolved that the location and operation of the proposed facility or activity is suitable to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from the activity.

PART VII.
REPEALED.

9VAC5-170-180. Repealed.

PART VIII.
APPEAL OF DEPARTMENT ACTIONS.

9VAC5-170-190. General provisions.

A. Except as provided in subsections B and C of this section, this part applies to the appeal of case decisions and other actions or inactions of the department.

B. The provisions of this part do not apply to the appeal of the promulgation of regulations or variances. Appeals of the promulgation of regulations and variances shall

be pursued under Article 4 (§ 2.2-4026) of the Administrative Process Act.

C. The provisions of this part do not apply to permit actions subject to Part I (9VAC5-80-5 et seq.) of 9VAC5-80 with respect to any party except the named party.

9VAC5-170-200. Appeal procedures.

A. An owner or other party significantly affected by an action of the department taken without a formal hearing, or by inaction of the department, may request a formal hearing in accordance with § 2.2-4020 of the Administrative Process Act, provided a petition requesting a formal hearing is filed with the department. In cases involving actions of the department, the petition shall be filed within 30 days after notice of the action is mailed, by postal or electronic delivery, or delivered to the owner or party requesting notification of the action.

B. Prior to a formal hearing, an informal fact finding shall be held pursuant to § 2.2-4019 of the Administrative Process Act, unless waived by the named party and the department.

C. A decision of the department resulting from a formal hearing shall constitute the final decision of the department.

D. Judicial review of a final decision of the department shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 2.2-4026 of the Administrative Process Act.

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

F. A petition for a formal hearing or a notice or petition for an appeal by itself shall not constitute a stay of decision or action. A stay of decision shall be sought through appropriate legal channels.

G. The director has final authority to adjudicate contested decisions of subordinates delegated powers by the director prior to appeal of decisions to the circuit court.

PART IX. CONFLICT OF INTEREST.

9VAC5-170-210. General.

A. Pursuant to § 128(a)(2) of the federal Clean Air Act, the director, in the director's capacity of approving permits or enforcement orders, shall adequately disclose any potential conflicts of interest. Such disclosure shall be made annually through the applicable disclosure forms set forth in § 2.2-3117 or § 2.2-3118 of the State and Local Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of

the Code of Virginia) as required in § 2.2-3114 of the State and Local Conflict of Interests Act. All terms used in the disclosure forms shall have the meaning as set forth in the State and Local Conflict of Interests Act.

B. Conduct concerning personal interest in transactions shall be governed by § 2.2-3112 of the State and Local Conflict of Interests Act. All terms used regarding personal interest in transactions shall have the meaning as set forth in the State and Local Conflict of Interests Act.

HISTORICAL NOTES:

Effective Date: January 1, 1998
Promulgated: January 1, 1998
Amended: December 31, 2008
Amended: January 1, 2009
Amended: August 28, 2013
Amended: November 19, 2014
Amended: November 11, 2020
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