



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Regional Directors, Director – Air Permits, Director – Air Compliance, Director – Data Analysis and Planning, Director – Regulatory Affairs, Air Permit Managers, Air Compliance Managers

CC: Richard F. Weeks, Chief Deputy Director
James J. Golden, Deputy Director for Program Development

FROM: Michael G. Dowd – Director, Air Division *MGD*

SUBJECT: Revision, APG - 206: Existing Source Startup, Shutdown, and Malfunction Opacity Exclusion for Title V Permits

DATE: March 16, 2009

Purpose:

This policy is a revision to the previously published APG - 206, dated December 6, 2001, in response to air permitting staff concerns regarding a discrepancy between the citations in the current 9 VAC 5-40-20 language and the APG - 206 guidance. This guidance document is a revision to APG - 206 with the updated citations in 9 VAC 5-40-20, as well as, corrected links to EPA policy documents "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" and the revision to the policy, "Re-Issuance of Clarification - State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown." The previously published APG- 206 was a letter to Mr. Richard F. Weeks from Mr. John M. Daniel, Jr., the revised APG-206 has been slightly restyled to reflect a memorandum format. This document supersedes previous policy document, APG-206 dated December 6, 2001.

Background:

~~9 VAC 5-40-20 sections A.2 and A.3 were first adopted and became effective in 1999. The APG - 206 guidance was published in 2001 having the correct citation for the State Implementation Plan (SIP) excluded section 9 VAC 5-40-20 A.3, which contained the opacity exclusion for startup and shutdown. When 9 VAC 5-40-20 was revised in 2007 a new section A.2 was written and the originally published sections A.2 and A.3 were renumbered to become~~

sections A.3 and A.4 respectively. The new section A.4 is still excluded from Virginia's SIP plan under 40 CFR 52.2420.

Revised APG - 206 Text:

This revision of APG-206 is to clarify issues regarding the existing source startup, shut down, and malfunction opacity exclusion. The opacity exclusion is located in the Department of Environmental Quality's (the Department) regulations under 9 VAC 5-40-20 A.4 and is as follows:

The opacity standards prescribed under this chapter shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard.

This part of 9 VAC 5-40-20 has been excluded from the Commonwealth's approved SIP and therefore cannot be included in a Title V permit. Please note neither the wording nor the citation, as applied to existing sources, can be included in the Title V permit. In fact, EPA has stated that they will not approve any Title V permit containing the opacity exclusion language. The specific exclusion for this regulation is listed in 40 CFR 52.2420.

The remainder of 9 VAC 5-40-20 is part of the approved SIP and, as applicable, should be included in the Title V permits. Also note the approved SIP does include the opacity exclusion for sources subject to New Source Regulations (see 9 VAC 5-50-20 A.4) This exclusion should be included, as applicable, in Title V permits. Please note existing sources are emission units that have been constructed, modified, or relocated prior to March 17, 1972 or have been reconstructed on or prior to December 10, 1976.

The regions have asked some specific questions concerning the opacity exclusion. The questions or a summary of their content are listed below:

1. "EPA has no adverse comments concerning the inclusion of the toxics rule in Title V permits. We should be able to include the opacity exclusion using the same mechanism as used for any other state only requirements."

Regulation 9 VAC 5-40-20 A.4 is an exclusion to the state opacity standard. The exclusion was specifically not approved as part of the SIP. The exclusion conflicts with the approved SIP. The state toxic rule does not conflict with the approved SIP.

2. "The Title V regulations allow for the inclusion of voluntary state only requirements. If a facility requests the inclusion of the opacity exclusion should the Department grant their request?"

The Department cannot include the opacity exclusion in a Title V permit. The Department has to be able to enforce a Title V permit in its entirety. The exclusion part

of the Title V permit would result in the Department not being able to enforce the opacity standard during startup, shut down, and malfunction.

3. "If the opacity exclusion is included in a federally enforceable State Operating Permit (SOP) the Department should include the exclusion in the Title V permit. Please note that a federally enforceable SOP has to be public noticed and reviewed by EPA."

During processing of the Title V permit the existing source opacity exclusion would be streamlined out. The existing source opacity exclusion is a less stringent standard than the approved SIP. The approved SIP implies that opacity standards apply at all times including startup, malfunction, and shutdown.

More information can be found by referring to EPA's excess emissions policy. The policy is titled "[State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown](#)" and the revision to the policy, "[Re-Issuance of Clarification - State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown](#)." Both documents can be found on the EPA web site at www.epa.gov.

The opacity exclusion must be addressed in the Title V Statement of Basis (SOB). The specific area of the SOB is either the "Inapplicable Requirements" or the "Streamlined Requirements" section of the SOB. The SOB, as applicable, must include the following:

The startup, shut down, and malfunction opacity exclusion listed in 9 VAC 5-40-20 A.4 cannot be included in any Title V permit. This portion of the regulation is not part of the federally approved state implementation plan. The opacity standard applies to existing sources at all times including startup, shutdown, and malfunction. Opacity exceedances during malfunction can be affirmatively defended provided all requirements of the affirmative defense section of this permit are met. Opacity exceedances during startup and shut down will be reviewed with enforcement discretion using the requirements of 9 VAC 5-40-20 E, which state that "At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate an affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions."
