



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Street address: 629 East Main Street, Richmond, Virginia 23219
Mailing address: P.O. Box 1105, Richmond, Virginia 23218
TDD (804) 698-4021
www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

MEMORANDUM

TO: Regional Directors
Director, Office of Air Compliance
Director, Office of Air Permits
Regional Air Compliance Managers
Regional Air Permit Managers

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

FROM: Michael G. Dowd, Director, Air Quality Division *MCD*

SUBJECT: Continuous Monitoring Equipment Tax Exemption Certification

DATE: January 23, 2009

The Code of Virginia at §58.1-3660.A provides that “certified pollution control equipment” is exempt from state and local taxes. “Certified pollution control equipment” is defined in Virginia Code §58.1-3660.B as

any property . . . equipment, facilities, or devices, used *primarily for the purpose of abating or preventing pollution* of the atmosphere . . . of the Commonwealth . . . and which the state certifying authority having jurisdiction with respect to such property has certified to the Department of Taxation as having been constructed, reconstructed, erected, or acquired in conformity with the state program or requirements for abatement or control of . . . atmospheric pollution

(Emphasis added.) Virginia Code §58.1-3660.B designates the State Air Pollution Control Board (SAPCB) as the “certifying authority” with respect to certification requests for most types of air pollution control equipment.

The Department of Environmental Quality (DEQ) acts on behalf of the SAPCB in certifying or refusing to certify requests for tax exempt status for equipment falling under the board's jurisdiction. DEQ certifies air pollution control equipment pursuant to the criteria and guidelines set forth in *Air Standard Operating Procedure 13: Tax Certification* (ASOP 13).

The purpose of this Memorandum is to clarify ASOP 13 with respect to the treatment of continuous emissions and opacity monitoring equipment (CEMs or COMs). Certified pollution control equipment and facilities, in accordance with Virginia Code §58.1-3660.B, means any property used **primarily for the purpose of abating or preventing pollution of the atmosphere of the Commonwealth**. DEQ certifies tax exempt property based on the functionality of the equipment. The primary purpose of continuous emissions or opacity monitoring apparatus nearly always is to measure air pollution from stacks, ducts, or vents of process or control equipment and it hardly ever has the capability of abating or preventing emissions to the atmosphere by itself. **Equipment whose primary function is to measure emissions and not to control emissions does not meet the statutory definition of certified pollution control equipment and consequently does not qualify for tax exempt certification under §58.1-3660 of the Virginia Code.**

ASOP 13 at page 13 states:

systems which directly measure pollutant emissions from a process and whose instantaneous reading are used to directly control or adjust the process equipment (either automatically or manually) so as to maintain proper operation with respect to air pollution requirements or limitations (such as continuous opacity monitors used to detect improper combustion or exceedance of a numeric opacity limitation) are eligible, since their *primary* purpose is air pollution *abatement or prevention*.

(Emphasis in original.) It is expected that very little, if any, continuous emissions monitoring equipment would meet this standard in order to justify its being certified as pollution control equipment. First, there is no known continuous emissions or opacity monitoring equipment in operation today that instantaneously adjusts process operations to assure compliance with emission limits, thus justifying as the CEMs primary purpose its ability to abate or prevent atmospheric pollution in order to qualify under §58.1-3660 of the Virginia Code. Second, DEQ is not aware of any facility whose personnel constantly monitor real-time CEMs or COMs data to make real time instantaneous operational adjustments based on those data to assure continuous compliance with emission limits. Should a facility make such a claim when seeking certification of CEMs or COMs, DEQ should grant the certification only if the facility can clearly demonstrate that an employee is continuously reviewing the real-time monitoring data and that the company has a system in place that allows the employee, based on that data, to instantaneously alter the operations of the facility to assure that no emission exceedances occur.

Questions or comments should be directed to the Office of Air Compliance Coordination.