



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	9VAC5 Chapter 85
<b>Regulation title</b>	Permits for Stationary Sources of Pollutants Subject to Regulation
<b>Action title</b>	Permits for Stationary Sources of Pollutants Subject to Regulation (Revision C10)
<b>Final agency preparation date</b>	September 10, 2010
<b>Document preparation date</b>	September 10, 2010

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 14 (2010) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

On June 3, 2010 (75 FR 31514), EPA promulgated final regulations for permitting for greenhouse gases (GHGs). The purpose of the regulatory changes is to enable permitting of GHGs for appropriate sources; this is accomplished by raising the permitting thresholds for GHGs from 100/250 tons per year (tpy) to 100,000 tpy for new prevention of significant deterioration (PSD) sources and federal operating permit (Title V) sources, and 75,000 tpy for modifications. The regulations affect the PSD NSR regulations in 40 CFR 51.166 by adding a definition of "subject to regulation," which includes the new thresholds, and revising the definition of "regulated NSR permit." Because Virginia is a "SIP-approved" state for PSD--that is, it has the authority to directly implement federal PSD regulations as long as its rules are at least as protective as the federal--the corresponding Virginia regulation must be revised accordingly when a final federal rule is promulgated. The regulation also affects the federal operating permit (Title V) regulations in 40 CFR Part 70 by adding a definition of "subject to regulation," which includes the new thresholds, and revising the definition of "major source." Virginia's federal operating permit regulations are federally approved, and must be revised to be at least as protective as the federal.

**Statement of final agency action**

*Please provide a statement of the final action taken by the agency, including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On September 10, 2010, the State Air Pollution Control Board took final action to adopt a regulation entitled, "Permits for Stationary Sources of Pollutants Subject to Regulation," 9VAC5-85. The regulatory action is to be effective on January 2, 2011.

The regulation is exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because it is necessary to meet the requirements of the federal Clean Air Act and does not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting this regulation, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
	85-10		Applicability established. Needed in order for potentially affected sources to determine if the regulation applies to a particular source.
	85-20		Requirements for federal (Title V) operating permits established. Needed in order to specify requirements for Articles 1 and 3 of 9VAC5-80.
	85-30		Terms specific to the federal operating permit program defined. Needed in order for the provisions of the rule to be clearly understood, and to ensure proper implementation.
	85-40		Requirements for major NSR for PSD areas established. Needed in order to specify requirements for Article 8 of 9VAC5-80.
	85-50		Terms specific to the PSD program defined. Needed in order for the provisions of the rule to be clearly understood, and to ensure proper implementation.
	85-60		Requirements for state operating permits established. Needed in order to specify requirements for Article 5 of 9VAC5-80.
	85-70		Terms specific to the state operating permit

			<p>program defined. Needed in order for the provisions of the rule to be clearly understood, and to ensure proper implementation.</p>
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**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The regulations apply to all facilities, including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations.

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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