



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	Article 8, 9VAC5-80 (Permits for Stationary Sources)
<b>Regulation title</b>	Regulations for the Control and Abatement of Air Pollution
<b>Action title</b>	Major New Source Review, PM <sub>2.5</sub> (Rev. A14)
<b>Document preparation date</b>	April 8, 2014

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 October 20, 2010 (75 FR 64864), the U.S. Environmental Protection Agency (EPA) published a final rule establishing Prevention of Significant Deterioration (PSD) new source review (NSR) provisions to implement significant impact levels (SILs) and a significant monitoring concentration (SMC) for particulate matter less than 2.5 micrometers (PM<sub>2.5</sub>). SILs are screening tools that are applied in PSD permitting to demonstrate that the proposed source's allowable emissions will not cause or contribute to a violation of the national ambient air quality standards (NAAQS) or increment. The SMC was used to exempt sources from a requirement to collect preconstruction monitoring data for up to 1 year before submitting a permit application in order to help determine existing ambient air quality.

On January 22, 2013, the United States Court of Appeals for the District of Columbia Circuit granted a request from the EPA to vacate and remand to EPA portions of the PSD regulations establishing the SILs for PM<sub>2.5</sub> so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. The court further vacated the portions of the PSD regulations establishing a PM<sub>2.5</sub> SMC, finding that the EPA lacked legal authority to adopt and use the PM<sub>2.5</sub> SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. EPA modified its regulations accordingly on December 9, 2013 (78 FR 73698). In Virginia, where the state administers the NSR program under an approved state implementation plan

(SIP), the state must adopt and submit revisions to the SIP to reflect the rule revisions. The revised SIP should be the same as or equivalent to the revised federal program.

**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 April 4, 2014, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas (9VAC5-80, Article 8). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are 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 they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations.

In adopting these amendments, 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>
9VAC5-80-1695 E 1		Lists air quality impacts for which the board may grant an exemption from monitoring requirements (SMC), including levels for PM <sub>2.5</sub> .	Revised to remove levels for PM <sub>2.5</sub> . Needed to meet specific federal requirements and enable proper permitting of PM <sub>2.5</sub> emissions.
9VAC5-80-1715 A 2		Lists air quality impacts for the purposes of source impact analysis (SILs), including levels for PM <sub>2.5</sub> .	Revised to remove levels for PM <sub>2.5</sub> . Needed to meet specific federal requirements and enable proper permitting of PM <sub>2.5</sub> emissions.

**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.*

---

An analysis of the proposal was completed for alternative regulatory methods that will minimize the adverse impact on small businesses without compromising health, safety, environmental and economic welfare.

This regulation meets the minimum requirements of the federal Clean Air Act and the minimum requirements of 40 CFR Part 51, and does not differ materially from the pertinent EPA regulations. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum federal requirements. Any such changes would compromise the effectiveness of the new requirements in protecting the health and welfare of the public, and could potentially subject the Commonwealth to federal control over the state permitting program.

**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.

**Acronyms and Definitions**

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

---

- EPA - U.S. Environmental Protection Agency
- NAAQS - national ambient air quality standards
- NSR - new source review
- PM<sub>2.5</sub> - particulate matter less than 2.5 micrometers
- PSD - Prevention of Significant Deterioration
- SIL - significant impact level
- SIP - state implementation plan
- SMC - significant monitoring concentration

TEMPLATES\EXEMPT\TH09  
REG\DEVA\14-08TF