



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Regional Directors, Director – Air Permits, Director – Air Compliance, Director – Data Analysis and Planning, 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: APG-569: Guidance to Implement and Enforce Non-delegated Federal Regulations

DATE: December 2, 2008

Purpose:

The following policy provides interim guidance to air permitting and compliance staff concerning permit implementation and compliance for non-delegated federal regulations.

Applicability:

This guidance applies to, but is not limited to, the following Federal Regulations currently not delegated to Virginia: NSPS, Subpart IIII
NSPS, Subpart JJJJ
MACT, Subpart ZZZZ

Implementation: (Air Permitting)

If a facility is subject to a Federal Regulation that is not delegated to Virginia, regional permitting should follow these steps:

1. **If the unit is determined exempt from permitting:** The regional permitting staff should issue a permit exemption letter with language referencing the Federal Regulation(s) that the unit is subject to. Specific details of the regulation do not need to be written in the exemption letter. **Example language** is shown below:

“Based on this review, it has been determined that the proposed project is exempt from the permitting requirements of Chapter 80, Article 6 of the Virginia Regulations for the Control and Abatement of Air Pollution as per 9 VAC 5-80-1320 B for generators of your

size, fuel type, and number of hours of operation. However, the proposed generator is an affected facility under [40 CFR 60, New Source Performance Standard (NSPS)] [40 CFR 63, Maximum Achievable Control Technology, (MACT)], Subpart [Subpart ID], therefore subject to owner/operator requirements of the [NSPS] [MACT]. In summary, the unit is required to comply with certain federal emission standards and operating limitations over its useful life. The Department of Environmental Quality (DEQ) advises you to review the attached [NSPS] [MACT] to ensure compliance with applicable emission and operational limitations. As the owner/operator you are also responsible for monitoring, notification, reporting and recordkeeping requirements of the [NSPS] [MACT]. Notifications shall be sent to EPA, Region III.”

2. If the unit requires a permit: The regional permitting staff must include in the permit:
 - a. The Federal Regulation(s) that the unit is subject to by reference in the cover letter. The permitting staff shall use the same “example language” as stated above. The Federal Regulation(s) should not be referenced in the “Requirements by Reference” condition.
 - b. Any limitation on the unit that constitutes BACT including, but not limiting to, emission limits, opacity limits, and sulfur contents. The emission rates do not have to be included in the permit, but should be used to derive emission limits (lbs/hr or tons/yr) that will go into the permit. A state permit should not have a limit on a unit that is less stringent than a federal limit on that same unit. In most cases, using the federal limit would be BACT and the conditions in the permit would receive the BACT citation (9 VAC 5-50-260). If BACT is not applied, the general Article 6 citation would be used (9 VAC 5-80-1180).

For example, a generating unit is subject to an emission limit of 0.3 g/kW-hr from NSPS, Subpart IIII. This limit would be used as an emission factor in place of an AP-42 emission factor. As a result, lbs/hr and tons/yr emission limits placed in the permit would be based on the federal emissions rate and the facility would not have two conflicting emission limits.

Note: No other requirements of a non-delegated federal rule such as monitoring, recordkeeping, reporting, etc. should be specifically included in the permit.

Inspection: (Air Compliance)

Inspecting facilities subject to a Federal Regulation not delegated to Virginia, the air inspector's responsibility is the following:

1. If the unit subject to NSPS or MACT is exempt from permitting and received an exemption letter: The air compliance staff will not enforce the requirements of the Federal Regulation since Virginia has not been delegated authority to enforce the rule. EPA retains that full authority and DEQ may refer concerns directly to EPA, Region III.
2. If the unit subject to NSPS or MACT is permitted: The air compliance staff should enforce the limitations placed on the unit in the permit (i.e. emission limits, opacity limits, and sulfur contents). No other requirements of the non-delegated Subpart(s) will be enforced because Virginia does not have authority to enforce the rule. If other requirements of the

Subpart(s) are included in a permit, then the air compliance staff is compelled to determine compliance with those conditions as they are written and interpreted.

Questions or comments on this guidance should be directed to the Office of Air Permit Programs.