



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

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482

MEMORANDUM

TO: Regional Directors; Director, Air Permits; Director, Air Compliance;
Director, Data Analysis and Planning; Director, Enforcement; Air Permit
Managers; Air Compliance Managers

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

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

SUBJECT: APG-569: Guidance for Permitting and Compliance for Facilities Subject to
Non-delegated Federal Regulations

DATE: Revised August 29, 2013 (Originally issued December 2, 2008)

Purpose:

The following procedures provide guidance to air permitting and compliance staff concerning permitting and compliance for non-delegated federal regulations. This guidance is not intended to cover every possible situation but should be applicable in most scenarios. Questions or comments on this guidance should be directed to the Office of Air Permit Programs and/or the Office of Air Compliance Coordination as appropriate.

Applicability:

This guidance applies to, but is not limited to, the following Federal Regulations currently not delegated to Virginia:

40 CFR Part 60:

Subpart IIII – [Standards of Performance for Stationary Compression Ignition Internal Combustion Engines](#)

Subpart JJJJ – [Standards of Performance for Stationary Spark Ignition Internal Combustion Engines](#)

40 CFR Part 63:

Subpart ZZZZ – National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (area sources only)

Subpart CCCCCC - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities

Subpart HHHHHH - National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

Subpart JJJJJJ - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources

Subpart XXXXXX - National Emission Standards for Hazardous Air Pollutants Area Sources Standards for Nine Metal Fabrication and Finishing Source Categories

Guidance:

Air Permitting

If a facility is subject to a Federal Regulation that is not delegated to Virginia, regional permitting staff 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 for a generator 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 63, Maximum Achievable Control Technology, (MACT) Subpart ZZZZ [and 40 CFR 60, New Source Performance Standard (NSPS), Subpart {Subpart ID}] therefore subject to owner/operator requirements of the MACT [and NSPS]. 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 MACT [and NSPS] 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 MACT [and NSPS]. Notifications shall be sent to EPA, Region III.”

2. If the unit requires a permit:
 - a. For non-Title V permits: The regional permitting staff must include in the permit:
 - i. 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.

- ii. Any limitation on the unit that constitutes BACT including, but not limited 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 CI engine driven electrical 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.

- b. For Title V permits: The regional permitting staff must include all requirements of the Federal Regulation(s) that apply into the Title V permit including requirements of non-delegated NSPSs and MACTs. If there is more than 3 years before the permit is up for renewal, then the permit should be opened and the applicable requirements should be added. If less than 3 years, the conditions should be incorporated at renewal.

Air Compliance

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

1. If the unit subject to NSPS or MACT is located at a facility that is not Title V major (i.e., true minor, synthetic minor, Title V by Rule), air compliance staff should not pursue compliance with the requirements of the non-delegated NSPS or MACT. EPA retains full authority for the non-delegated NSPS or MACT and DEQ may refer concerns directly to EPA, Region III.
2. If the unit subject to NSPS or MACT is located at a facility that is Title V major, air compliance staff should pursue compliance with the requirements of the non-delegated NSPS or MACT that applies, regardless whether the non-delegated NSPS or MACT has yet been incorporated into the facility's current Title V permit (see 9 VAC 5-80-260 A.1 and Code § 10.1-1322).