



Exempt Action Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	9 VAC 5-520
Secondary action(s)	None
Regulation title	General Permit for Qualified Energy Generator
Action title	Biomass Energy Generator General Permit (Rev.Cg)
Date this document prepared	February 5, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4006 A 9 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 36 (2006) and 58 (1999).

Purpose

Please describe the subject matter and intent of the planned regulatory action.

The purpose of the proposed action is to develop a general permit with terms and conditions as may be necessary to form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to emissions units that meet the requirements of a qualified energy generator as defined in §10.1-1308.1 of the Code of Virginia. Such sources generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product. Energy is generated or produced from biomass and is sold to an unrelated person or used in a manufacturing process.

Statutory Authority

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific proposed regulation.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Section 10.1-1308.1 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) establishes the requirement to develop a general permit(s) authorizing a streamlined permitting process for qualified energy generators.

Legal requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the proposal, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal requirements and the extent to which the requirements are mandatory or discretionary.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

(1) establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;

(2) establish a program for the enforcement of the emission limitations and schedules for compliance; and

(3) establish programs for the regulation and permitting of the modification and construction of any stationary source within the areas covered by the plan to assure the achievement of the ambient air quality standards.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, as summarized below.

Subpart F (Procedural Requirements) specifies definitions of key terms, stipulations and format for plan submission, requirements for public hearings, and conditions for plan revisions and federal approval.

Subpart G (Control Strategy) specifies the description of emissions reductions estimates sufficient to attain and maintain the standards, the description of control measures and schedules for implementation, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart I (Review of New Sources and Modifications) specifies legally enforceable procedures, public availability of information on sources, identification of responsible agency, and administrative procedures.

Section 51.160 of Subpart I specifies that the plan must stipulate legally enforceable procedures that enable the permitting agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in either a violation of any part of a control strategy or interference with attainment or maintenance of a national standard and, if such violation or interference would occur, the means by which the construction or modification can be prevented. The procedures must identify types and sizes of facilities, buildings, structures or installations which will be subject to review and discuss the basis for determining which facilities will be subject to review. The procedures must provide that owners of facilities, buildings, structures or installations must submit information on the nature and amounts of emissions and on the location, construction and operation of the facility. The procedures must ensure that owners comply with applicable control strategies after permit approval. The procedures must discuss air quality data and modeling requirements on which applications must be based.

Section 51.161 of Subpart I specifies that the permitting agency must provide opportunity for public comment on information submitted by owners and on the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval. Section 51.161 also specifies the minimum requirements for public notice and comment on this information.

Section 51.162 of Subpart I specifies that the responsible agency must be identified in the plan.

Section 51.163 of Subpart I specifies that the plan must include administrative procedures to be followed in determining whether the construction or modification of a facility, building, structure or installation will violate applicable control strategies or interfere with the attainment or maintenance of a national standard.

Subpart L (Legal Authority) specifies identification of legal authority to implement plans and assignment of legal authority to local agencies.

Section 51.230 of Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and
- (4) prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard.

Section 51.231 of Subpart L requires the identification of legal authority as follows:

- (1) the provisions of law or regulation which the state determines provide the authorities required under § 51.231 must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and
- (2) the plan must show that the legal authorities specified in Subpart L are available to the state at the time of submission of the plan.

State Requirements

Section 10.1-1308.1 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) establishes the requirement to develop a general permit(s) authorizing a streamlined permitting process for qualified energy generators.

Public Participation

Please indicate the agency is seeking comments on the intended regulatory action, to include (i) ideas to assist in the development of the proposal, (ii) the costs and benefits of the alternatives stated in this document or other alternatives, and (iii) the effects of the proposal on farm and forest land preservation. Indicate that the agency is also seeking information on impacts on small businesses. Also indicate whether a public meeting is to be held to receive comments on this notice. If a public meeting is to be held, indicate that the date, time and place of the meeting may be found in the calendar of events section of the Virginia Register of Regulations.

The Department is soliciting comments on the intended regulatory action, including but not limited to (i) ideas to assist in the development of the proposal, (ii) the costs and benefits of the alternatives stated in this document or other alternatives, (iii) potential impacts of the regulation, and (iv) the effects of the proposal on farm and forest land preservation. The Department is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs, (ii) probable effect of the proposal on affected small businesses, and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulatory action.

The Department accepts written comments by e-mail, facsimile transmission and postal mail. In order to be considered, written comments must include the full name, address and telephone number of the person commenting and be received by the Department by 5:00 p.m. on the date established as the close of the comment period. Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits and documents received are part of the public record.

All comments requested by this document must be submitted to the agency contact: Mary E. Major, Environmental Program Manager, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (e-mail: memajor@deq.virginia.gov) (fax number: 804-698-4510). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Requests for documents and additional information may also be submitted to the agency contact.

Participatory Approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposal. Indicate that: (1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; (2) the agency is using the participatory approach in the development of the proposal; or (3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Department will form a technical advisory committee to assist in the development of the proposal. If you want to be on the committee, notify the agency contact in writing by the end of the comment period

and provide your name, address, phone number and the organization you represent (if any). Multi-applications from a single company, organization, group or other entity count as one for purposes of making a decision through the collaborative approach. Notification of the composition of the technical advisory committee will be sent to all applicants. The primary function of the committee is to develop a proposal for Department consideration through the collaborative approach of regulatory negotiation and consensus.

Impact on Family

Please provided an assessment of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.

It is not anticipated that the proposal will have a direct impact on families. However, there will be positive indirect impacts in that the proposal 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.