

TENTATIVE AGENDA AND MINIBOOK  
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, JUNE 10, 2011  
HOUSE ROOM C  
GENERAL ASSEMBLY BUILDING  
9<sup>TH</sup> & BROAD STREETS  
RICHMOND, VIRGINIA

Convene – 9:00 a.m.

		<b>TAB</b>
<b>I.</b>	<b>Review and Approve Agenda</b>	
<b>II.</b>	<b>Minutes</b> (March 18, 2011)	A
<b>III.</b>	<b>Final Regulations - Exempt Actions</b>	
	Major New Source Review Permits (Rev. A11)	Sabasteanski B
	Amendments to Air Regulations Revising Citations to Solid Waste Management Regulations (Rev. D11)	Miller C
	Electric Generator Voluntary Demand Response General Permit (Rev. Dg)	Major D
	Emergency Generator General Permit (Rev. Eg)	Major E
<b>IV.</b>	<b>Petition for Rulemaking</b>	
	Regulation of Fossil Fuel Carbon Dioxide Emissions and Establishments of an Effective Emissions Reduction Strategy	Sabasteanski F
<b>V.</b>	<b>High Priority Violators Report</b>	Nicol G
<b>VI.</b>	<b>Public Forum</b>	
<b>VII.</b>	<b>Other Business</b>	
	Air Division Director's Report	Dowd H
	Sulfur Dioxide NAAQS Implementation Guidance Document – Fugitive Dust	
	Legislative Update	Jenkins
	Future Meetings (confirm September 9 and December 2, 2011)	

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

**PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration. For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held. In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented at the public hearing or during the public comment period up to 3 minutes to exercise their rights to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

**POOLING MINUTES:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

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### **Exempt Actions – Final**

#### ***Tab B - Major New Source Review Permits (Rev. A11)***

Articles 8 and 9 of 9VAC5 Chapter 80 (Permits for Stationary Sources) apply to the construction or reconstruction of new major stationary sources or major modifications to existing ones in prevention of significant deterioration (PSD) areas and in nonattainment areas. This major new source review (NSR) permitting program requires that the owner obtain a permit prior to the construction or modification of a major source. The owner of the proposed new or modified source must provide information as may be needed to enable a preconstruction review in order to determine compliance with applicable control technology and other standards, and to assess the impact of the emissions from the facility on air quality. The regulations also provide the basis for final action on the permit depending on the results of the preconstruction review. On 73 FR 28321 (May 16, 2008), EPA promulgated a final rule revising the NSR permitting program for PSD and nonattainment areas. The new rule includes the major source threshold, significant emissions rate, and offset ratios for particulate matter less than 2.5 micrometers (PM<sub>2.5</sub>), interpollutant trading for offsets and applicability of NSR to PM<sub>2.5</sub> precursors. On October 20, 2010 (75 FR 64864), EPA promulgated a final rule revising the federal NSR permitting program for PSD. The new rule amends the requirements for PM<sub>2.5</sub> under the PSD program by adding

maximum allowable increases in ambient pollutant concentrations (increments) and two screening tools, known as the significant impact levels (SILs) and a significant monitoring concentration (SMC) for PM<sub>2.5</sub>. In Virginia, where the state is administering the NSR program under an approved SIP, the state may 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. The department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act. Because the state regulations are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations, the state regulations are exempt from the standard regulatory adoption process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the standard regulatory adoption process and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. Further, in adopting the regulation amendments under the provisions of § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision. Notice that the regulation would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website. Below is a brief summary of the substantive amendments that the department is recommending be adopted.

1. The list of abbreviations has been corrected and updated, including the addition of terms used for different types of particulate matter. [9VAC5-10-30, pages 2 and 4]
2. The PSD definition of "baseline area" has been revised to correct the federal Clean Air Act citations and to indicate a specific air quality impact for PM<sub>2.5</sub>. [9VAC5-80-1615 C, page 11]
3. The PSD definition of "baseline date" has been revised to indicate specific baseline dates for PM<sub>2.5</sub>, and to correct the federal Clean Air Act citation. [9VAC5-80-1615 C, page 12]
4. The PSD definition of "regulated NSR pollutant" has been revised to specify various pollutant precursors. [9VAC5-80-1615 C, pages 27-28]
5. The PSD definition of "significant" has been revised to add emissions rates for various forms of PM<sub>2.5</sub>. [9VAC5-80-1615 C, page 29]
6. The PSD list of maximum allowable increases for ambient air increments has been revised to add levels for PM<sub>2.5</sub>. [9VAC5-80-1635, pages 31-32]
7. The PSD air quality impacts for which the board may grant an exemption from monitoring requirements have been revised to include levels for PM<sub>2.5</sub>. [9VAC5-80-1695 E 1, page 35]
8. The PSD air quality impacts for the purposes of source impact analysis have been revised to add levels for PM<sub>2.5</sub>. [9VAC5-80-1715, pages 36-37]
9. For the PSD purposes of special requirements for sources affecting federal class I areas, the list of maximum allowable increases for ambient air increments has been revised to add levels for PM<sub>2.5</sub>. [9VAC5-80-1765 F, pages 38-39]
10. The nonattainment definitions of "continuous emissions monitoring system (CEMS)" and "continuous parameter monitoring system (CPMS)" have been corrected to properly reference "article" instead of "section." [9VAC5-80-2010 C, page 46]
11. The nonattainment definition of "regulated NSR pollutant" has been revised to specify various pollutant precursors. [9VAC5-80-2010 C, pages 57-58]
12. The nonattainment definition of "significant" has been revised to add emissions rates for various forms of PM<sub>2.5</sub>. [9VAC5-80-2010 C, page 59]
13. The nonattainment provisions for offsets have been revised in order to accommodate interprecursor pollutant offsetting for PM<sub>2.5</sub>. [9VAC5-80-2120, pages 61-64]

#### DEPARTMENT RECOMMENDATION

1. It is recommended that the board adopt the proposal, with an effective date as provided in the Administrative Process Act.
2. In adopting this proposal, the board should affirm 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.

#### ***Tab C - Amendments to Air Regulations Revising Citations to Solid Waste Management Regulations (Rev. D11)***

Revision D11 is presented to the Board for your consideration as final regulations. This regulatory amendment updates citations in the Board's regulations which are necessary due to the recodification of the Solid Waste Management Regulations from 9VAC20-80 to 9VAC20-81. The amended regulations are: 9VAC5-40, Existing Stationary Sources (Primary Action); 9VAC5-50, New and Modified Stationary Sources; 9VAC5-130, Regulation for Open Burning. § 2.2-4006.A.3 of the Code of Virginia allows the Board to adopt the rule as a final regulation without previous consideration, announcement, or public participation. The regulations would be final 30 days after publication in the *Virginia Register*. A draft Virginia Regulatory Town Hall document and the amendment changes are in your board books. At your board meeting on June 10, 2011, the department will request that the Board adopt Revision D11

as a final regulation, authorize its publication, and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

***Tab D - Electric Generator Voluntary Demand Response General Permit (Rev. Dg)***

The General Assembly adopted legislation (§ 10.1-1307.02 B 4) which mandates that the Board develop a general permit for the construction, installation, and operation of distillate oil, natural gas, liquid propane gas, and bio-diesel fired electric generating facilities that participate in a voluntary demand response program (i.e., load curtailment, demand response, peak shaving or like program) and that qualify as non-major facilities under the federal Clean Air Act. The proposed general permit regulation includes emissions limits for both compression and spark ignition electric generating sources. The Department is requesting approval of a draft final general permit that meet federal statutory and regulatory requirements. Approval of the general permit will ensure that the Commonwealth will be able to administer the general permit for electric generating facilities that participate in a voluntary demand response program in an efficient and effective manner.

**PUBLIC PARTICIPATION ACTIVITIES:** To solicit comment from the public on the proposed general permit, the Department issued a notice that provided for receiving comment during a comment period and at a public hearing. At the December, 2010 meeting, the Board authorized the Department to promulgate for public comment a proposed general permit entitled Electric Generator Voluntary Demand Response General Permit. A public hearing was advertised accordingly and held in Richmond on March 16, 2011 and the public comment period closed on April 4, 2011. The proposed general permit subject to the hearing is summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board. Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The Board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The Board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the general permit.

1. SUBJECT: Definition of "emergency."

COMMENTS: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC .

TEXT: Blue Sky strongly endorses the VA DEQ's intent to include in its definition of emergency to allow emergency engines to include situations when emergency demand response (DR) events are activated. The entity that controls much of the electric grid in Virginia is Pennsylvania Jersey Maryland Interconnection, LLC (PJM). PJM has implemented the Emergency Load Response Program ("ELRP") as its last panic button to be used to prevent brownouts and blackouts. The ELRP for emergency engines is only implemented once PJM notifies electric distributors that an emergency exists or may occur and it is necessary to implement the procedures in the PJM Manual 13 Emergency Operations. In the eastern portion of PJM (including parts of Virginia), the ELRP has only been called a total of 20 hours from 2003 thru 2009. In 2010, the ELRP was called in the Dominion portion of Virginia for 5.3 hours. The ELRP has never been called in the western portion of PJM. The emergency DR program is truly reserved for severe, emergency conditions.

RESPONSE: Support for the proposal is appreciated.

2. SUBJECT: Definition of "emergency. "

COMMENTS: Richard H. Counihan, Vice President Government Affairs, EnerNOC, Inc.

TEXT: EnerNOC strongly supports the DEQ's proposal to allow new emergency engines to participate in emergency demand response (DR) programs such as PJM's Emergency Load Response Program (ELRP) via its definition of emergency in the proposed rules. Numerous states have similarly changed their definition of emergency, in order to allow the use of emergency engines in emergency DR programs (e.g., to use the engines just before lights out rather than waiting for a blackout).

RESPONSE: Support for the proposal is appreciated.

3. SUBJECT: Definition of "demand response."

COMMENTS: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC and Richard H. Counihan, Vice President Government Affairs, EnerNOC, Inc.

TEXT: Since the ELRP is often referred to as "emergency DR" and peak shaving is referred to as "nonemergency DR" the DEQ may consider a modification to its definitions of demand response in both 9VAC5-530-20 and 9VAC5-540-20 to avoid any misconceptions. The DEQ may consider adding the following sentence to the definitions of "demand response" in both proposed General Permits:

"Demand response does not include emergency engines participating in an ISO-declared emergency."

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

4. SUBJECT: Emission limits for non-emergency engines

COMMENTS: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC.

TEXT: In the proposed Electric Generator Voluntary Demand Response General Permit, the emission limits for non-emergency engines in 9VAC5-530-180 Tables IV-I through IV-4 and 9VAC-530-260 Tables V-I through V-4 are extremely low, requiring add-on emission controls. Although it is understood that to currently permit non-emergency engines in northern Virginia, add-on emission controls are required, it is unlikely that emission controls would be required in the rest of Virginia since a \$/ton Best

Available Control Technology ("BACT") cost will be prohibitive. It is understood that owners of emission units have the option to obtain an air permit for nonemergency engines under New Source Review. If the DEQ wanted to lessen its review process, it may consider changes to the emission limits for non-emergency engines in attainment areas to be more reasonable so that add-on controls would not be required.

RESPONSE: The Technical Advisory Committee (TAC) determined that all non-emergency/peak shaver engines would have to meet Tier 4 standards, whether in attainment areas or non-attainment areas. According to the New Source Performance Standards (NSPS) Subpart IIII of 40 CFR Part 60, if a facility installs a 2011 (or newer) model year non-emergency compression ignition (CI) engine, it must be a Tier 4 engine. Starting January 1, 2013, owners and operators of non-emergency CI engines will have to install engines that meet the applicable requirements for 2011 model year non-emergency engines (i.e., Tier 4 engines). Therefore, the general permit regulation is consistent with the NSPS.

No change has been made to the proposal as a result of this comment.

SUMMARY OF PROPOSED GENERAL PERMIT: Below is a brief summary of the substantive provisions of the general permit that were originally proposed for public comment.

1. Definitions used in the regulation are identified [9VAC5-530-20].
2. General provisions are established which cover the overall basis [9VAC5-530-30], applicability and general requirements of the general permit [9VAC5-530-40] through 50], circumvention, suspension or revocation [9VAC5-530-60], compliance authority [9VAC5-530-70] and enforcement of a general permit [9VAC5-530-80].
3. Procedures for obtaining the general permit are described and provide requirements for granting an authorization to operate under the general permit [9VAC5-530-90], applications for coverage under the general permit [9VAC5-530-100], required information for initial applications [9VAC5-530-110], authorization to operate [9VAC5-530-120], and transfer of authorization to operate [9VAC5-530-130].
4. General permit terms and conditions for using fuel throughput for compliance demonstration are established including monitoring requirements [9VAC5-530-160], operating limits [9VAC5-530-170], emissions limits [9VAC5-530-180], testing requirements [9VAC5-530-190], recordkeeping [9VAC5-530-200] and reporting requirements [9VAC5-530-210].
5. General permit terms and conditions for using hours of operation for compliance demonstration are established including monitoring requirements [9VAC5-530-240], operating limits [9VAC5-530-250], emission limits [9VAC5-530-260], testing requirements [9VAC5-530-270], recordkeeping [9VAC5-530-280] and reporting requirements [9VAC5-530-290].

#### SUMMARY OF CHANGES TO PROPOSED GENERAL PERMIT

Below is a brief summary of the substantive changes and technical corrections the Department is recommending be made to the proposed general permit.

##### 1. Substantive changes:

9VAC5-530-20: The definition of "demand response" was modified by clarifying that demand response participants do not include affected units that are participating in an ISO's Manual 13 Emergency Operations program.

##### 2. Technical corrections:

###### Part IV

9VAC5-530-170 F 5: An incorrect reference to diesel fuel oil was deleted.

9VAC5-530-180 B: "Emission" to "Emissions" was changed in the title of Table IV-2.

9VAC5-530-180 C: The "+" was removed from Table IV-3.

9VAC5-530-180 D: "Emission" to "Emissions" was changed in the title of Table IV-4.

9VAC5-530-180 D: The "+" was removed from Table IV-4.

###### Part V

9VAC5-530-260 B: "Emission" to "Emissions" was changed in the title of Table V-2.

9VAC5-530-260 C: The "+" was removed from Table V-3.

9VAC5-530-260 D: "Emission" to "Emissions" was changed in the title of Table V-4.

9VAC5-530-260 D: The "+" was removed from Table V-4.

#### DEPARTMENT RECOMMENDATION

1. It is recommended that the board adopt the proposal, as consistent with the Administrative Process Act.
2. In adopting this proposal, the board should affirm 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.

#### ***Tab E – Emergency Generator General Permit (Rev. Eg)***

The General Assembly adopted legislation (§ 10.1-1307.02 a) which mandates that the Board develop a general permit to authorize the construction, installation, reconstruction, modification, and operation of emergency generation sources during independent service operator (ISO) declared emergencies. It includes the definition of "emergency generation source" as a stationary internal combustion engine that operates according to the procedures in the ISO's emergency operations manual during an ISO-declared emergency. It includes emissions limits for both compression ignition (CI) and spark ignition (SI) engines and provides more stringent emission limits for those sources operating in nonattainment areas (i.e., Northern Virginia). The Department is requesting approval of a draft final general permit that meet federal statutory and regulatory requirements. Approval of the general permit will

ensure that the Commonwealth will be able to administer the general permit for back-up generation during ISO-declared emergencies in an efficient and effective manner.

**PUBLIC PARTICIPATION ACTIVITIES:** To solicit comment from the public on the proposed general permit, the Department issued a notice that provided for receiving comment during a comment period and at a public hearing. At the December, 2010 meeting, the Board authorized the Department to promulgate for public comment a proposed general permit entitled Emergency Generator General Permit. A public hearing was advertised accordingly and held in Richmond on March 16, 2011, and the public comment period closed on April 4, 2011. The proposed general permit subject to the hearing is summarized below followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

Below is a summary of each person's testimony and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the Board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The Board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The Board's action is based on consideration of the overall goals and objectives of the air quality program and the intended purpose of the general permit.

1. SUBJECT: Definition of "emergency."

COMMENTER: Richard H. Counihan, Vice President Government Affairs, EnerNOC, Inc.

TEXT: EnerNOC strongly supports the DEQ's proposal to allow new emergency engines to participate in emergency demand response (DR) programs such as PJM's Emergency Load Response Program (ELRP) via its definition of emergency in the proposed rules. Numerous states have similarly changed their definition of emergency, in order to allow the use of emergency engines in emergency DR programs (e.g., to use the engines just before lights out rather than waiting for a blackout).

RESPONSE: Support for the proposal is appreciated.

2. SUBJECT: Definition of "emergency."

COMMENTER: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC .

TEXT: Blue Sky strongly endorses the DEQ's intent to include in its definition of emergency to allow emergency engines to include situations when emergency demand response (DR) events are activated. The entity that controls much of the electric grid in Virginia is Pennsylvania Jersey Maryland Interconnection, LLC (PJM). PJM has implemented the Emergency Load Response Program (ELRP) as its last panic button to be used to prevent brownouts and blackouts. The ELRP for emergency engines is only implemented once PJM notifies electric distributors that an emergency exists or may occur and it is necessary to implement the procedures in the PJM Manual 13 Emergency Operations. In the eastern portion of PJM (including parts of Virginia), the ELRP has only been called a total of 20 hours from 2003 thru 2009. In 2010, the ELRP was called in the Dominion portion of Virginia for 5.3 hours. The ELRP has never been called in the western portion of PJM. The emergency DR program is truly reserved for severe, emergency conditions.

RESPONSE: Support for the proposal is appreciated.

3. SUBJECT: Definition of "demand response."

COMMENTER: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC . and Richard H. Counihan, Vice President Government Affairs, EnerNOC, Inc.

TEXT: Since the ELRP is often referred to as "emergency DR" and peak shaving is referred to as "nonemergency DR" the DEQ may consider a modification to its definitions of demand response in both 9VAC5-530-20 and 9VAC5-540-20 to avoid any misconceptions. The DEQ may consider adding the following sentence to the definitions of "demand response" in both proposed General Permits:

"Demand response does not include emergency engines participating in an ISO-declared emergency."

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

4. SUBJECT: Permit applicability.

COMMENTER: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC.

TEXT: It is understood that the Proposed Emergency Engine General Permit only affects newly installed or modified engines. This is recommended since the DEQ should not be required to permit existing emergency engines which would be a waste of valuable DEQ resources.

RESPONSE: The commenter's understanding is correct. Section 9VAC5-540-40, Applicability, stipulates that the regulation applies only to units constructed or modified after the effective date of the regulation.

No changes have been made to the proposal based on this comment.

5. SUBJECT: Proposed operating limits.

COMMENTER: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC.

TEXT: In the proposed Emergency Generator General Permit, 9VAC5-540-170 A allows each affected unit located in an attainment area to operate up to 450 hours per year and 9VAC5-540-170 B allows each affected unit located in a non-attainment area to operate up to 500 hours per year. It is believed the DEQ has the hours mixed up and meant 450 hours for nonattainment areas and 500 hours for attainment areas.

RESPONSE: DEQ does not disagree that it appears that the allowable hours of operation are reversed for permitting thresholds in attainment and nonattainment areas. Attainment areas and nonattainment areas have different hours of operation

throughputs because of permit applicability. In a nonattainment area, permit applicability for emergency generators is based on 8,760 hours of operation per year (hrs/yr). The large number for hours of operation results in lower size applicability thresholds which, in turn, results in more engines being permitted in nonattainment areas. In an attainment area, permit applicability for emergency generators is based on 500 hours of operation per year (hrs/yr). The smaller number for hours of operation results in a higher size applicability threshold. The Technical Advisory Committee (TAC) considered several other factors when determining the maximum number of hours that would be allowed for operation of emergency units including the year the regulation would become effective (2011) and the maximum emission rates listed in the New Source Performance Standards (NSPS) Subpart IIII and JJJJ of 40 CFR Part 60. Calculations using the annual permit emission limits, hours of operation and the NSPS emissions rates resulted in establishing the maximum aggregate horsepower rating (MAHR) for both SI and CI engines in nonattainment and attainment areas. The MAHR establishes the emission level above which the general permit does not apply. The Technical Advisory Committee (TAC) also established the annual emission limit for NO<sub>x</sub> at a level such that modeling is not required (according to current agency policy) which, for an attainment area, is an annual emission limit of 39.4 tons/yr. However, the permitting exemption level for NO<sub>x</sub> is 40 tons/yr. Based on operations of 500 hr/yr in an attainment area, an emergency generator would not qualify for both the permitting threshold limit of 40 tons of NO<sub>x</sub>/yr and meet the NO<sub>x</sub> emission limit of 39.4 tons/yr because operating at 500 hours would exceed the maximum emissions limit. As a result, the TAC decided to limit the emergency generators in attainment areas to 450 hrs/yr, thereby ensuring that emergency generators could qualify for a general permit.

No changes have been made to the proposal based on this comment.

6. SUBJECT: Emissions limits for emergency engines.

COMMENTER: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC.

TEXT: Table V of 9VAC5-540-170 provides the emission limits for CI units located in attainment areas and Table VII provides the emission limits in non-attainment areas. Since the EPA New Source Performance Standards (NSPS) for CI engines (Subpart IIII of 40 CFR Part 60) do not differentiate between attainment and nonattainment areas, it is unclear why the DEQ has decided to provide different emission limits. For example, see the >2,237 kW emission limits for less than 10 liters/cylinder for 2010 engines: The NO<sub>x</sub> emission limit is 9.2 g/kW per hour for attainment areas and is 6.4 g/kW per hour for nonattainment areas.) Engine manufacturers build engines to meet the NSPS requirements. Since the NSPS does not differentiate between attainment and nonattainment areas, in order to meet the requirements of Table VII, add-on emission controls would most likely be required adding a very large burden to the engine owner. It is recommended that both Tables V and VII be equivalent and they should match the NSPS. Likewise Tables VI and VIII should be equivalent.

RESPONSE: Emission limits were split into an attainment area and a nonattainment area because a state BACT limit of 4.8 g NO<sub>x</sub>/hp-hr has already been established for an emergency diesel generator in a nonattainment area. Therefore, if the state BACT limit was more stringent than the NSPS limit, the more stringent state BACT limit was used. As to the "large burden" of add-on controls for the engine owner, the cost of any add on controls may be compensated for by the financial incentive contained in the agreement that the emission unit owner enters into with the power provider as a pass-through cost.

No changes have been made to the proposal based on this comment.

7. SUBJECT: Emissions limits for emergency engines.

COMMENTER: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC.

TEXT: In Table IX, it is unclear where the emission limits for SI units for PM, PM<sub>10</sub>, and PM<sub>2.5</sub> come from since the NSPS (Subpart JJJJ of 40 CFR Part 60) does not include emissions limits for these pollutants.

RESPONSE: SI engines size thresholds were based on NSPS, Subpart JJJJ standards (NO<sub>x</sub>, CO, and VOC) and AP-42 (PM, PM<sub>10</sub>, and PM<sub>2.5</sub>) for emission factors.

No changes have been made to the proposal based on this comment.

8. SUBJECT: Emissions limits for emergency engines.

COMMENTER: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC.

TEXT: Limits presented in Table IX are appropriate for engines >130 hp and this should be added to the table.

RESPONSE: Subpart JJJJ of 40 CFR Part 60, states that it is for engines "25 > x < 130 HP and x ≥ 130 HP." Therefore, the Technical Advisory Committee determined that no size limit was necessary as the NSPS applies to all size engines which are required to be permitted.

No changes have been made to the proposal based on this comment.

9. SUBJECT: Emissions limits for emergency engines.

COMMENTER: Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC.

TEXT: Finally, Table IX, "ppm" should be changed to "ppmvd."

RESPONSE: This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.

#### SUMMARY OF PROPOSED GENERAL PERMIT

Below is a brief summary of the substantive provisions of the general permit that were originally proposed for public comment.

1. Definitions used in the regulation are identified [9AVC5-540-20].

2. General provisions are established which cover the overall basis [9VAC5-540-30], applicability [9VAC5-540-40], general requirements of the general permit [9VAC5-540-50], circumvention, suspension or revocation [9VAC5-540-60], compliance authority [9VAC5-540-70] and general enforcement of a general permit [9VAC5-540-80].

3. General permit administrative procedures are established for granting an authorization to operate under the general permit [9VAC5-540-90], applications for coverage under the general permit [9VAC5-540-100], required information for initial applications [9VAC5-540-120], authorization to operate [9VAC5-540-120], and transfer of authorization to construct and operate [9VAC5-540-130].

4. General permit terms and conditions are established [9VAC5-540-140 and 9VAC5-540-150]. They include monitoring requirements [9VAC5-540-160], operating limits [9VAC5-540-170], emissions limits for both CI and SI engines in attainment and nonattainment areas [9VAC5-540-180], testing requirements [9VAC5-540-190], recordkeeping requirements [9VAC5-540-200], reporting requirements [9VAC5-540-210], and enforcement provisions [9VAC5-540-220].

#### SUMMARY OF CHANGES TO PROPOSED GENERAL PERMIT

Below is a brief summary of the substantive change and technical correction the Department is recommending be made to the proposed general permit.

##### 1. Substantive change:

###### Part I

9VAC5-540-20: The definition of "demand response" was modified by clarifying that demand response participants do not include affected units that are participating in an ISO's Manual 13 Emergency Operations program.

##### 2. Technical correction:

###### Part IV

9VAC5-540-180 E: In Table IX Change "ppm" was changed to "ppmvd."

#### DEPARTMENT RECOMMENDATION

1. It is recommended that the board adopt the proposal, as consistent with the Administrative Process Act.

2. In adopting this proposal, the board should affirm 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.

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#### **Petition for Rulemaking**

##### ***Tab F – Regulation of Fossil Fuel Carbon Dioxide Emissions and Establishments of an Effective Emissions Reduction Strategy***

On May 4, 2011, the department received a petition from Emma Serrels, and Alec Looorz and Victoria Looorz (Kids vs. Global Warming) to initiate a rulemaking concerning carbon dioxide (CO<sub>2</sub>) emissions. Today, the department is presenting the rulemaking petition for receipt by the board and outlining the plan for deposition of the request. No decisions are required by the board at this time. The applicable statutory requirements governing petitions are found in 9VAC5-5-60 of the board's Public Participation Guidelines, and in § 2.2-4007 of the Administrative Process Act. Both of these statutory provisions govern the content of the petition; however, processing the petition will be conducted under the Administrative Process Act, which takes precedence. The petitioner is requesting the board to adopt regulations to:

1. Ensure that carbon dioxide emissions from fossil fuels peak in the year 2012;
2. Adopt a carbon dioxide emissions reduction plan that, consistent with the best available science, reduces state-wide fossil fuel carbon dioxide emissions by at least 6% annually until at least 2050, and expands Virginia's capacity for carbon sequestration;
3. Establish a state-wide greenhouse gas emissions accounting, verification and inventory and issues annual progress reports so that the public has access to accurate data regarding the effectiveness of Virginia's efforts to reduce fossil fuel carbon dioxide emissions; and
4. Adopt any necessary policies or regulations to implement the greenhouse gas emissions reduction plan, as detailed in 1 and 2 above.

Within 14 days of this board meeting, the department will forward a notice of the petition to the Registrar for publication in the Virginia Register of Regulations. The notice will include a public comment period of at least 21 days, during which written comments will be accepted. At a board meeting following the end of the comment period, the department will present the petition and a summary of comments to the board for it to make a decision on whether to grant the petition request or deny the petition request. The board must make a final decision within 90 days after the end of the comment period. Should there be no board meeting scheduled during this 90 day period, the board's decision must be made at the first available board meeting and forwarded to the Registrar for publication in the Virginia Register within 14 days of the board meeting.

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**High Priority Violators Report (Tab G)**

**NOV's Issued from January through March 2011.**

DEQ Region	Facility	Brief Description	Status
NRO	<p><b>GenOn Mid-Atlantic LLC / GenOn Potomac River LLC (pka Mirant)</b></p> <p>Alexandria, Virginia</p> <p>Registration No. 70228</p> <p>SIC 4911 Electrical Services NAICS 221112 Utilities – Electric Power Generation, Transmission and Distribution</p>	<p><b>Discovery dates:01/13/2011</b></p> <p><b>Alleged violations:</b> Substituting Sodium Bicarbonate (SBC) as a dry sorbent for Sodium Sesquicarbonate (Trona)</p> <p>Failure to maintain and operate in a manner consistent with air pollution control practices for minimizing emissions.</p>	<p><b>5<sup>th</sup> NOV</b> - Issued 02/08/2011</p>
NRO	<p><b>VADATA Manassas Exchange Data Center</b></p> <p>Manassas, Virginia</p> <p>Registration No. 73741</p> <p>SIC 7374 Data Processing &amp; Preparation NAICS 518210 Data Processing, Hosting, and Related Services</p>	<p><b>Discovery dates: 03/28/2011</b></p> <p><b>Alleged violations:</b> Construction and Operation without a permit.</p>	<p><b>NOV</b> - Issued 03/29/2011</p>

**CO's Issued from January through March 2011.**

NRO	<p><b>Kinder Morgan Southeast Terminals LLC – Newington Terminal</b></p> <p>Newington, Virginia</p> <p>Registration No. 70087</p> <p>SIC 5171 Petroleum Bulk Stations &amp; Term NAICS 424710 Petroleum Bulk Stations &amp; Terminals</p>	<p><b>Discovery dates: 04/14/2010</b></p> <p><b>Alleged violations:</b> Exceeded annual allowable throughput of reformulated gasoline (RFG) as per the facility's minor NSR permit.</p>	<p><b>NOV</b> - Issued 05/10/2010 <b>CO</b> - Issued 02/28/2011 <b>Civil Charge</b> - \$49,254.40 (Paid)</p> <p><b>Additional Information:</b> Facility submitted a permit application to increase the amount of gasoline that is currently being loaded through the loading racks at the facility. The order will be terminated upon permit issuance.</p>
PRO	<p><b>Honeywell International Inc.</b></p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50232</p> <p>SIC 2869, 2899, 2819 Industr. Organic Chemical NEC, Chemical &amp; Chem. Prep, NEC, Industrial Inorganic Chemicals NAICS 325199 Chemical Mfg.</p>	<p><b>Discovery date: 04/01/2010</b></p> <p><b>Alleged violations:</b> Honeywell was unable to provide records documenting opacity observations, and 2/2010 for a number of various processes, construction without a permit and exceeding the annual NOx limit in for the Area 8/16 thermal oxidizer in 2006 and 2007.</p>	<p><b>NOV</b> - Issued 10/26/2010 <b>CO</b> - Issued 04/08/2011 <b>Civil Charge</b> - \$363,542.00 (paid)</p> <p><b>Additional Information:</b> Honeywell will develop and implement a computerized task list to ensure compliance tasks are conducted.</p>

**CO's In Development – Previously Reported NOV's**

<p>NRO</p>	<p><b>GenOn Mid-Atlantic LLC / GenOn Potomac River LLC (pka Mirant)</b></p> <p>Alexandria, Virginia</p> <p>Registration No. 70228</p> <p>SIC 4911 Electrical Services NAICS 221112 Utilities – Electric Power Generation, Transmission and Distribution</p>	<p><b>Discovery dates:</b>  <b>1<sup>st</sup> NOV – 02/04/2010</b>  <b>2<sup>nd</sup> NOV – 03/08/2010</b>  <b>3<sup>rd</sup> NOV – 07/08/2010</b></p> <p><b>Alleged violations:</b>          Failure to maintain and operate in a manner consistent with air pollution control practices for minimizing emissions.</p> <p><b>1<sup>st</sup> NOV</b>          Failure to provide all required data in quarterly Continuous Emissions Monitoring (CEM) Report.</p> <p>Exceeded permitted limits for particulate matter (PM) emissions (including condensable).</p> <p><b>2<sup>nd</sup> NOV</b>          Exceeding the visible emissions limit of 20% opacity.</p> <p><b>3<sup>rd</sup> NOV</b>          Exceeding the visible emissions limit of 20% opacity.</p> <p><b>4<sup>th</sup> NOV (not HPV)</b>          Combustion of non-permitted fuel (used oil generated onsite) and coal with an ash content above 11.0%.</p>	<p><b>1<sup>st</sup> NOV</b> - Issued 04/06/2010  <b>2<sup>nd</sup> NOV</b> - Issued 05/12/2010  <b>3<sup>rd</sup> NOV</b> - Issued 07/28/2010  <b>4<sup>th</sup> NOV</b> - Issued 10/22/2010</p> <p><b>Additional Information:</b>          On December 13, 2010 Mirant and RRI Merged to form GenOn.</p> <p>The CO will incorporate all active NOV's.</p>
<p>VRO</p>	<p><b>Neuman Aluminum Impact Extrusion, Inc.</b></p> <p>Waynesboro, Virginia</p> <p>Registration No. 81346</p> <p>SIC 3411 Metal Cans NAICS 332431 Fabricated Metal Product Manufacturing</p>	<p><b>Discovery date: 05/10/2010</b></p> <p><b>Alleged violation:</b>          Failure to meet trichloroethylene (TCE) emissions limit by the May 3, 2010 compliance deadline.</p>	<p><b>NOV</b> - Issued 09/13/2010</p> <p><b>Additional Information:</b>          On October 13, 2010 DEQ received response from the Facility outlining actions taken to ensure compliance.</p>
<p>NRO</p>	<p><b>King George Landfill, Inc.</b></p> <p>King George, Virginia</p> <p>Registration No. 40903</p> <p>SIC 4953 Refuse Systems NAICS 562212 Administrative and Support Waste Management</p>	<p><b>Discovery date: 09/07/2010</b></p> <p><b>Alleged violation:</b>          Test Results demonstrate excess SO2 emissions from the three Solar Centaur Combustion Turbines.</p>	<p><b>NOV</b> - Issued 09/15/2010</p>

## Actions occurring from April 1, 2011 through May 11, 2011

*\*The following actions have occurred post quarter and will be included in the next quarterly report.*

DEQ Region	Facility	Status Update
*NRO	<b>GenOn Mid-Atlantic LLC / GenOn Potomac River LLC (pka Mirant)</b>	A CO was executed on May 6, 2011, to capture all active NOV's issued to the Facility since April 6, 2010. The CO included a civil charge of \$275,562.00. The Facility agreed to submit Standard Operating Procedures (for PM-CEMS, dry-sorbent usage, and ash content of coal), conduct a Relative Response Audit on Stacks 1 and 4, and submit methodology for meeting compliance with Conditions 19 and 41 of the July 31, 2008 State Operating Permit.
*NRO	<b>King George Landfill, Inc.</b>	A CO was executed on April 18, 2011. The CO included a civil charge of \$40,000.00. The Facility agreed to monitor sulfur content of the treated landfill gas on a daily basis for a minimum of 6 months. Submit 2009 annual sulfur values, gas pretreatment information, and gas collection upset plan to DEQ. The Facility will stack test gas turbine by June 18, 2011.
*BRRO	<b>Dynax America Corporation</b>	A NOV was issued on 4/19/2011, for not meeting the required 90% percent of valid data capture. The facility only captured 68% of valid data.
*VRO	<b>Neuman Aluminum Impact Extrusion, Inc.</b>	A NOV was issued to the Facility for failure to meet trichloroethylene (TCE) emissions limit by the May 3, 2010 compliance deadline. DEQ and the Facility have since determined that the previously submitted emissions data was invalid. DEQ has evaluated the updated emission values and agree that the updated values demonstrate that the Facility was in compliance with the May 3, 2010, TCE limit. This action will be closed by informal action.
*PRO	<b>Super Radiator Coils</b>	Super Radiator Coils is a Refrigeration & Heating Equipment Manufacturer located in Chesterfield Virginia. A NOV was issued on May 9, 2011, for failure to submit the Title V Permit renewal application within required timeframe.

## EPA CD's In Development – Previously Reported NOV's

*\*\*The inspections at the Hopewell facilities were conducted as part of EPA Region III's Hopewell Geographic Initiative, which is an enforcement strategy created, in part to better understand the transfer of volatile organic compounds and hazardous air pollutants between facilities in the Hopewell geographic air shed.*

**EPA	<b>Ashland Aqualon Functional Ingredients (Hercules)</b>  Hopewell, Virginia Hopewell City  Registration No. 50363  SIC 2869 Industr. Organic Chemical NEC NAICS 325199 Chemical Mfg.	<b>Discovery date</b> – 11/08/2007  <b>Alleged violations:</b> Alleged violations of the Cellulose MACT (40 CFR 63 Subpart UUUU) and the associated Leak Detection and Repair (LDAR) program.	<b>EPA NOV</b> - Issued 04/02/2009  <b>Additional Information:</b> 7/8/09 - NOV Meeting was held with EPA, DEQ, and the Responsible Party
**EPA	<b>Hopewell Regional Wastewater Treatment Facility (WWTP)</b>  Hopewell, Virginia Hopewell City  Registration No. 50735  SIC 4952 Sewage Systems NAICS 221320 Utilities, Water, Sewage and Other Systems	<b>Discovery dates</b> – 11/07/2007  <b>Alleged violations:</b> Violations of 40 CFR 63 Subpart VVV (Publically Owned Treatment Works - POTW) and Reasonably Available Control Technology (RACT) that include failure to provide appropriate notification, meet control requirements, conduct inspections and monitoring, properly calculate emission values.  Violations of 40 CFR 63 Subpart VVV (Publically Owned Treatment Works - POTW) and Reasonably Available Control Technology (RACT) for failure meet control requirements.	<b>EPA 1<sup>st</sup> NOV</b> - Issued 07/06/2009 <b>EPA 2<sup>nd</sup> NOV</b> - Issued 12/17/2010  <b>Additional Information:</b> NOV Meeting was held with EPA, DEQ, and the Responsible Party on 9/23/09 and 03/09/2011.
**EPA	<b>DuPont Teijin Films</b>  Hopewell, Virginia Chesterfield County	<b>Discovery dates</b> – 04/18/2008  <b>Alleged violations:</b> <b>1<sup>st</sup> NOV</b> - Violations of 40 CFR 63 Subpart JJJ	<b>EPA 1<sup>st</sup> NOV</b> - Issued 07/17/2009 <b>EPA 2<sup>nd</sup> NOV</b> - Issued 12/7/2010  <b>Additional Information:</b>

	<p>Registration No. 50418</p> <p>SIC 2821 Plastic Material/Synthetic resins NAICS 325211 Chemical - resin, Synthetic rubber, and artificial synthetic fibers.</p>	<p>(Polymers and Resins Group IV), Subpart H (Equipment Leaks), and Subpart EEEE (Organic Liquid Distribution (Non-Gasoline) that include improper use of emission debits and credits; failure to provide certifications, reports and plans; improper emission controls; and failure to identify and repair leaking components.</p> <p><b>2<sup>nd</sup> NOV</b> – Further violations of 40 CFR 63 Subpart JJJ (Polymers and Resins Group IV), and Subpart H (Equipment Leaks), that include improper use of emission debits and credits; failure to provide certifications, reports and plans; and improper emission controls.</p>	<p>NOV Meetings have been held with EPA, DEQ, and the Responsible Party on 9/10/09 and 2/2/2011.</p>
**EPA	<p><b>Honeywell International Inc.</b></p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50232</p> <p>SIC 2869, 2899, 2819 Industr. Organic Chemical NEC, Chemical &amp; Chem. Prep, NEC, Industrial Inorganic Chemicals NAICS 325199 Chemical Mfg.</p>	<p><b>Discovery date</b> – 11/06/2007</p> <p><b>Alleged violations:</b> <b>1<sup>st</sup> NOV</b> - Alleged violations of the Benzene Waste NESHAP (40 CFR 61 Subpart FF) and the associated Leak Detection and Repair (LDAR) program for the Organic HAPs from Equipment Leaks MACT (40 CFR 63 Subpart H)</p> <p><b>2<sup>nd</sup> NOV</b> - Annual NOx and PM10 emission limit exceedances in 2004, 2005, 2006, and 2007 at the A, C, D, and E trains of the Area 9 hydroxylamine production unit.</p>	<p><b>EPA 1<sup>st</sup> NOV</b> - Issued 03/10/2009 <b>EPA 2<sup>nd</sup> NOV</b> - Issued 08/21/2009</p> <p><b>Additional Information:</b> NOV Meetings have been held with EPA, DEQ, and the Responsible Party on 5/27/09, 11/17/09, 03/25/10, 11/10/2010 and 1/26/2011.</p>
**EPA	<p><b>Smurfit-Stone Container Corp. / Hopewell Mill</b></p> <p>Hopewell, Virginia</p> <p>Registration No. 50370</p> <p>SIC 2631 Pulp Mills NAICS 322130 Pulp, Paper, and Paperboard Products</p>	<p><b>Discovery dates</b> – 07/27/2010</p> <p><b>Alleged violations:</b> Failure to operate in a manner to demonstrate compliance with HAP reduction requirements.</p> <p>Failure to submit periodic startup, shutdown and malfunction reports.</p>	<p><b>NOV</b> - Issued 09/27/2010</p> <p><b>Additional Information:</b> NOV Meeting was held with EPA, DEQ, and the Responsible Party on 01/31/2011.</p>