

DEQ response:

We disagree with DPB's assertion that the net benefits from this regulatory action could be maximized if EPA's original time frames were incorporated.

While many aspects of the EPA rule will likely result in some air quality benefit when applied in Virginia, the Commonwealth's overall air quality situation can benefit from a number of changes to the EPA requirements. § 10.1-1308 of the Code of Virginia states, "The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations." In other words, no regulation may contribute to the deterioration of air quality. Given the uncertainty of specific impacts that implementing the federal rules will have on the areas of the state that are attaining the national standards, it is believed that certain limitations on some aspects of the federal rules may help ensure that this state-specific need is met.

In addition to ensuring that areas of the state that meet the national standards continue to do so, the Commonwealth is also obligated to actively improve air quality. Currently, approximately one half of the Commonwealth's citizens live in areas that do not attain the national standards. Virginia's nonattainment problems extend beyond its borders as well: a neighboring state has submitted a § 126 petition to EPA claiming that Virginia's air pollution is having a negative impact on its air quality. Visibility problems have been identified in Virginia's national park areas. Additionally, nitrogen deposition from airborne emissions is contributing to serious water quality problems in Chesapeake Bay. In this larger context, it is clear that the state needs to take additional steps beyond the immediate legal requirements for nonattainment and PSD areas if larger, statewide issues of air quality are to be addressed. Given the uncertainty surrounding the specific impacts of the federal rule, the state is exercising its responsibility to consider a somewhat more closely scrutinized process for implementing the basic elements of NSR reform.

DPB's analysis is heavily dependent on the analysis EPA conducted in support of the federal regulatory action. Serious issues have been raised with respect to EPA's analysis; indeed, numerous states and organizations are currently engaged in lawsuits with the agency over the quality of their analysis. While we have no specific issue to take with EPA's analysis, neither do we believe it reasonable, under the circumstances, to rely on it completely and uncritically when assessing Virginia's air quality needs and the board's judgment in determining the best means of meeting those needs.

We also note that DPB's example of when an increase would trigger major new source review, using a one-ton increase as an example, is unrealistic. For an increase to trigger major new source review, the increase must be above the significance level thresholds. For the criteria pollutants (most PSD permits are issued for these pollutants), the thresholds range from 15 to 100 tons per year. While it is true that the significance level for some pollutants such as lead is 0.6 tons per year, it is extremely rare to issue a PSD permit due to an increase for lead. Therefore, while we understand

DPB's interest in making a general demonstration of how the program works, we also believe that it does not correspond to how the regulations work on a practical basis.

Virginia has a legal obligation to incorporate the federal regulations in a manner that will result in equal or better environmental benefit. The proposal is designed to balance the need to improve permitting certainty and flexibility with Virginia's specific air quality needs.