



Exempt Action Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	Primary action: 9VAC5-530 Secondary action: none
Regulation title	Electric Generator Voluntary Demand Response General Permit
Action title	Peak Shaver Generator General Permit (Rev. Dg)
Date this document prepared	June 14, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 A 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 14 (2010) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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 Clean Air Act.

The general permit regulation includes emissions limits for both compression ignition (CI) and spark ignition (SI) electric generating units and limits for units located in attainment and nonattainment areas. Compliance determinations can be made by either monitoring fuel throughput or by monitoring hours of operation.

The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the source meets the requirements of the regulation.

The only substantive change to the regulation is a modification of the definition of "demand response" by clarifying that demand response participants do not include affected units that are participating in an ISO's Manual 13 Emergency Operations program.

Statement of final agency action

Please provide a statement of the final action taken by the agency, including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On June 10, 2011, the State Air Pollution Control Board adopted a final regulation entitled "Electric Generator Voluntary Demand Response General Permit" (9 VAC 5 Chapter 530). The regulation is to be effective as provided in the Administrative Process Act.

General permits are exempt from certain provisions of the state administrative procedures for the adoption of regulations as provided in § 2.2-4006 A 8 of the Code of Virginia.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
*9VAC5-530-20	"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Demand response actions are typically undertaken by the source owner in response to a request from a utility or electrical grid system operator or in response to market prices.	Added the following clarifying language: "Demand response participants do not include affected units that are participating in an ISO's Manual 13 Emergency Operations program."	Provides clarity.
9VAC5-530-70 F 5	A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751) for S15 diesel fuel oil	A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751) [for S15 diesel fuel oil]	Reference to diesel oil is incorrect.
9VAC5-530-180 B	TABLE IV-2.	TABLE IV-2.	Technical correction

	Emission Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area.	[Emission Emissions] Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area.	
9VAC5-530-180 C	TABLE IV-3. Emissions Limits for SI Engines Located in Either an Attainment or Nonattainment Area. Model Year Pre 2011+	TABLE IV-3. Emissions Limits for SI Engines Located in Either an Attainment or Nonattainment Area. Model Year Pre 2011[+]	Technical correction
9VAC5-530-180 D	TABLE IV-4. Emission Limits During Testing for SI Units Located in Either an Attainment or Nonattainment Area.	TABLE IV-4. [Emission Emissions] Limits During Testing for SI Units Located in Either an Attainment or Nonattainment Area.	Technical correction
9VAC5-530-180 D	TABLE IV-4. Emissions Limits for SI Engines Located in Either an Attainment or Nonattainment Area. Model Year Pre 2011+	TABLE IV-4. Emissions Limits for SI Engines Located in Either an Attainment or Nonattainment Area. Model Year Pre 2011[+]	Technical correction
9VAC5-530-260 B	TABLE V-2. Emission Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area.	TABLE V-2. [Emission Emissions] Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area.	Technical correction
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Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
<p>Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC.</p>	<p>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.</p>	<p>Support for the proposal is appreciated.</p>
<p>Richard H. Counihan, Vice President Government Affairs, EnerNOC, Inc.</p>	<p>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</p>	<p>Support for the proposal is appreciated.</p>

	use the engines just before lights out rather than waiting for a blackout).	
Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC and Richard H. Counihan, Vice President Government Affairs, EnerNOC, Inc.	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."	This comment is acceptable and appropriate changes reflecting the intent of the comment have been made to the proposal.
Donald C. DiCristofaro, CCM, President, Blue Sky Environmental LLC .	In the proposed Electric Generator Voluntary Demand Response General Permit, the emission limits for non-emergency engines in 9VAC5-530-180 Tables IV-1 through IV-4 and 9VAC-530-260 Tables V-1 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.	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.

Enter any other statement here

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9VAC5-530-20		"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Demand response actions are typically undertaken by the source owner in response to a request from a utility or electrical grid system operator or in response to market prices.	"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid. Demand response actions are typically undertaken by the source owner in response to a request from a utility or electrical grid system operator or in response to market prices. [Demand response participants do not include affected units that are participating in an ISO's Manual 13 Emergency Operations program.]
9VAC5-530-70 F 5		A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751) for S15 diesel fuel oil; and	5. A statement that the biodiesel fuel complies with the American Society for Testing and Materials specifications (ASTM D6751) [for S15 diesel fuel oil]; and Reference to diesel oil is incorrect.
9VAC5-530-180 B		TABLE IV-2. Emission Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area.	TABLE IV-2. [Emission Emissions] Limits During Testing for CI Units Located in Either an Attainment or Nonattainment Area. Technical correction
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Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while

minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: (1) the establishment of less stringent compliance or reporting requirements; (2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) the consolidation or simplification of compliance or reporting requirements; (4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and (5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

The regulation applies to electric generating facilities that participate in a voluntary demand response program (i.e., load curtailment, demand response, peak shaving or like program) that meet the requirements as stipulated, including small businesses. Any (1) establishment of less stringent compliance or reporting standards; (2) establishment of less stringent schedules or deadlines for compliance or reporting requirements; (3) consolidation or simplification of compliance or reporting requirements; (4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; or (5) exemption of small businesses from all or any part of the requirements contained in the proposed regulation for all small businesses would directly, significantly and adversely affect the benefits that would be achieved through the implementation of the regulations. The responsibility of protecting air quality for all citizens of the Commonwealth must be balanced with unnecessary regulatory burdens for small businesses. The formation of a general permit for electric generating facilities achieves this balance.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

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

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