

# Virginia Regulatory Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	State Air Pollution Control Board
<b>Regulation Title:</b>	Regulation for Emissions Trading
<b>Primary Action:</b>	9 VAC 5 Chapter 140
<b>Secondary Action(s):</b>	None
<b>Action Title:</b>	NO <sub>x</sub> Budget Trading Program - Flow Control (Rev. H02)
<b>Date:</b>	November 4, 2003

Please refer to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), Executive Order Twenty-Five (98), and the Virginia Register Form, Style and Procedure Manual for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.*

The regulation establishes a NO<sub>x</sub> Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides including the following provisions: permitting allowance methodology, monitoring, banking, compliance supplement pool, compliance determination and opt-in provisions for sources not covered by the regulation.

Beginning May 31, 2004, electric generating units with a nameplate capacity greater than 25 MWe and non-electric generating units above 250 mmBtu will be subject to the provisions of the regulation. NO<sub>x</sub> emissions from subject units shall be capped to a specific limit (measured in tons) during the summer months of May 1 through September 31, otherwise know as the control period. The NO<sub>x</sub> cap shall be determined through a methodology based upon emission rates multiplied by heat input. If a unit does not use all of it's allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the capped limit, additional allowances may be purchased or the source may use banked allowances to offset the amount of NO<sub>x</sub> generated above the capped limit.

The regulation is being amended to change the flow control date in 9 VAC 5-140-550 from 2006 to 2005.

### Substantial Changes Made Since the Proposed Stage

*Please briefly and generally summarize any substantial changes made since the proposed action was published. Please provide citations of the sections of the proposed regulation that have been substantially altered since the proposed stage.*

There were no changes made since the proposed action was published.

### Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

On November 5, 2003, the State Air Pollution Control Board adopted a final amendment to a regulation entitled "Regulation for Emissions Trading" (9 VAC Chapter 140). The regulation amendment is to be effective as provided in the Administrative Process Act.

### Basis

*Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation adopted. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to adopt the regulation and that it comports with applicable state and/or federal law.*

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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the regulation amendment is available upon request.

### Purpose

*Please provide a statement explaining the rationale or justification of the regulation as it relates to the health, safety or welfare of citizens.*

The purpose of the regulation is to establish general provisions addressing applicability, permitting, allowance allocation, excess emissions, monitoring, and opt-in provisions to create a Virginia NO<sub>x</sub> Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides in order to protect public health and welfare. The purpose of the amendment being made is to correct an EPA identified deficiency in the banking provisions of the NO<sub>x</sub> Budget Trading Program regulation with regard to the start date for flow control.

## Substance

*Please identify and explain the new substantial provisions, the substantial changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the changes.*

9 VAC 5-140-550 is amended by changing the year for starting flow control from 2006 to 2005.

## Issues

*Please provide a statement identifying the issues associated with the regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

1. Public: The primary advantage to the public of implementing the proposed amendment is avoiding a formal finding of disapproval by the EPA of the Commonwealth's NOx SIP submittal.

The primary disadvantage of not implementing the proposed amendment is that a final disapproval of the NOx SIP submittal could result in federal sanctions including the loss of federal highway funding and sewage treatment plant funding.

2. Department: The advantages and disadvantages for the department are the same as for the public, however, in addition to federal funding sanctions, other possible sanctions include federal implementation of a significant portion of the Commonwealth's air quality program.

## Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

No testimony was received on the proposed regulation.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, made since the publication of the proposed regulation. This statement should provide a section-by-section description of changes.*

There were no changes made since the proposed action was published.

## Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which 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 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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