Virginia Regulatory Town Hall

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Fast Track Proposed Regulation
Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 6 (9 VAC 5-80-1100 et seq.) of Part II of 9 VAC 5 Chapter 80
Secondary action(s)	9 VAC 5-50-260 and 9 VAC 5-60-92
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Permits for New and Modified Sources (Rev. K04)
Document preparation date	Enter date this form is uploaded on the Town Hall

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do ***not*** *state each provision or amendment or restate the purpose and intent of the regulation.*

The regulation applies to the construction or reconstruction of new stationary sources or expansions (modifications) to existing ones. Exemptions are provided for smaller facilities. With some exceptions, the owner must obtain a permit from the agency prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as needed to enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the net emissions from the facility on air quality. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review. The regulation provides a source-wide perspective to determine applicability based upon the net emissions changes directly resulting from the modification (physical or operational change). Procedures for making changes to permits are included. There are provisions which allow the use of a general permit. The regulation also allows consideration of additional factors for making Best Available Control Technology (BACT) determinations for sources subject to minor new source review.

The major change that is being made to the program is to convert from a permit applicability approach that looks at the changes from a source wide perspective to determine applicability to an approach which

looks at each physical or operational change to the source individually to determine applicability. Currently applicability is based on the net emissions increase in actual emissions based on all the source wide emissions changes directly resultant from the physical or operational change. The revised program would base permit applicability on the uncontrolled emissions from each individual physical or operational change to the source.

Legal Basis

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation proposed. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the 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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Purpose

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

The purpose of the regulation is to protect public health, safety and welfare by establishing the procedural and legal basis for the issuance of new source permits for proposed new or expanded facilities that will (i) enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, (ii) to assess the impact of the emissions from the facility on air quality, and (iii) provide a state and federally enforceable mechanism to enforce permit program requirements. The proposal is being made to simplify the program requirements and reduce the complexity of the permit program.

Rationale for Using Fast Track Process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Section 2.2-4012.1 of the Code of Virginia permits the use of the fast-track rulemaking process for regulations that are expected to be noncontroversial. The rationale for using the fast track process is as follows:

- On May 21, 2002, a major revision to the minor NSR program was adopted. The evolution of 9 VAC 5-80-10 and 11 to Article 6 resulted in several major changes being made to the program enabling regulation. The new Article 6 became effective on September 1, 2002 in order to provide a period to train the Department staff.

- One of these changes was to convert from a permit applicability approach that looks at physical or operational changes at a single emissions unit to determine applicability to an approach, like that of

the prevention of significant deterioration (PSD) program, which looks at the changes from a source wide perspective to determine applicability. However, unlike PSD, the determination of applicability does not look back at historical emissions changes but looks only at the emissions changes at the other emissions units directly resultant from the physical or operational change at the affected emissions unit. Applicability is based on the net emissions increase in emissions from all affected units in the project.

- While the netting concept, essential to determining applicability, works well in major NSR, it is not working in minor NSR, primarily due to the lack of an underlying permit program to make the netting operations enforceable.

- Implementation of the new regulation has placed an unmanageable administrative burden upon the Department and the affected entities. Under the new regulation, determination of permit and BACT applicability cannot be made with any reasonable degree of efficiency, effectiveness or consistency. Interpreting the new regulation has become a major time-consuming workload. While some problems were identified during the adoption process, the complexity of the resulting implementation problems far exceeded the predictions.

- After almost two years of training, discussions, regulatory interpretations, and guidance documents, little progress has been made toward implementing the program in a satisfactory manner. The current situation cannot continue; the regulation must be fixed as soon as possible. The preferred and simplest course of action would be to eliminate the netting concept and return the regulation to its previous applicability structure.

- This action is not being initiated at the behest of any external groups or parties nor would the proposal contain any of the EPA major NSR elements. However, opposition would be unlikely from the regulated community as they are as frustrated with the new regulation as is the Department. Also, opposition would be unlikely from the environmental community since they objected to the netting concept during the process of initial adoption. Finally, EPA would have no basis to object since the regulation would be returned to the applicability structure in the currently approved SIP version.

If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, the agency will (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Any objections must be filed with the agency contact specified below in the public participation section.

Also, if public comments are received indicating that use of the source wide approach to determine applicability is beneficial to some of the regulated community, the agency will consider (i) stopping the fast-track process and (ii) proceeding the with normal promulgation process, with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The substantive change that is being made to the program is to convert from a permit applicability approach that looks at the changes from a source wide perspective to determine applicability to an approach which looks at each physical or operational change to the source individually to determine

applicability. Currently applicability is based on the net emissions increase in actual emissions based on all the source wide emissions changes directly resultant from the physical or operational change. The revised program would base permit applicability on the uncontrolled emissions from each individual physical or operational change to the source. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program have been restructured to increase clarity. Finally, a number of other provisions have been rewritten to increase clarity.

Issues

Please identify the issues associated with the proposed regulatory action, including: (1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; (2) the primary advantages and disadvantages to the agency or the Commonwealth; and (3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

1. Public: The advantages to the affected entities will vary widely according to source size and type and the particular options chosen by each source in order to comply with the regulation. The current regulation poses many challenges to the affected entities in making applicability determinations, particularly for smaller businesses for which the program is mainly intended. Implementation of the current regulation has placed a significant administrative burden upon the affected entities. Under the current regulation, determination of permit applicability cannot be made with any reasonable degree of efficiency, effectiveness or consistency. Interpreting the new regulation is major time-consuming workload for the affected entities. However, the affected entities will lose the increased flexibility inherent in the more complex regulation.

2. Department: The problems cited above relative to making applicability determinations also place a similar burden upon the Department. The primary benefit as a result of the changes to this regulation will be a reduction in the complexity of the regulation and associated reduction in workload of the permit writers and field inspectors who make compliance determinations. There are no disadvantages to the Department.

Localities Particularly Affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forest land preservation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing (see below) or by mail, email or facsimile transmission to #[name], #[title], Office of Air Regulatory Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240 (email: #@deq.virginia.gov) (fax number 804-698-4510). Written comments must include the name and address of the commenter. Comments by facsimile transmission will be accepted only if followed by receipt of the original within one week. Comments by email will be accepted only if the name and address of the commenter are included. All testimony, exhibits and documents received are matters of public record. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public hearing will be held and the notice of the public hearing, along with the comment period closing date, can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Financial Impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the information specified below. Also include a description of the beneficial impact the regulation is designed to produce.

a. Description of the individuals, businesses or other entities likely to be affected by the regulation	Any owner who wishes to construct or modify a stationary source. Certain exemptions are provided for the smaller sources covered by the program.
b. Agency's best estimate of the number of such entities that will be affected	Historical data suggests that, statewide, hundreds of minor new source permits are issued annually. Approximately 335 permits were issued in 2001, 350 in 2002, 250 in 2003, and 170 in the first half of 2004. Due to all the variables that may impact economic growth in the Commonwealth in the future it is difficult at best to estimate the number of permits that may be issued; however, if historical trends continue, hundreds of sources, annually, will continue to be impacted by the program.
c. Projected cost of the regulation for affected individuals, businesses, or other entities	The costs of this regulation for affected entities will depend entirely on the specific situation for each source. Costs will vary from source to source due to the size and complexity of each source. Costs will also vary from source to source depending on the type of modification(s) or installation of new equipment. Since the permit will contain no expiration date (except for applications for phased construction), no renewal costs will be involved unless the owner wishes to renegotiate the terms and conditions of the permit. For many sources, costs will increase over the years for reasons apart from the minor new source

	review (MNSR) program. Sources located in areas of high growth will incur costs as a result of changing air quality requirements and the air quality evaluations that result as a part of new source permitting process. These costs will be incurred whether or not the state MNSR program exists. Due to the variability among the entities affected by this proposed regulation, an estimation of costs is given by a range from small to large or more complex sources or facilities. To estimate the costs to affected entities, the MNSR regulation requirements that will increase costs are listed below by category. Each category is then described along with the costs that can be estimated. 1. Costs of preparing a permit application and providing data to the agency so that the application can be evaluated. 2. Costs of negotiating BACT for new and modified sources. 3. Costs of fulfilling any additional requirements, such as testing, monitoring and reporting. <u>Category 1.</u> The current state MNSR permit application parallels the federal requirements for new source review under PSD, which looks at the changes from a source wide perspective to determine applicability. However, unlike PSD the determination of applicability does not look back at historical emissions changes but looks only at the emissions changes directly resultant from the physical or operational change. Determining permit applicability and filling out the MNSR permit application takes considerable time, especially for existing sources. The proposal is expected to reduce the complexity of the applicability determination process and therefore the burden of filling out the associated application. The cost to prepare the permit application varies considerably depending on the situation surrounding the need for a permit. However, the estimate ranges from $800 for a small source to $80,000 for a large source. The cost for an amendment ranges from $160 for a small source to $4,200 for a large source. A small source is assumed here to mean one site where one stack from a simple process emits either one or a few pollutants. A large source is assumed here to mean one site where hundreds of stacks emit a

	multiplicity of pollutants and where the processes creating these emissions are complex. Category 2. Currently, BACT evaluation must be conducted for an application for an MNSR permit. This requirement can be very time consuming for both the source and the department staff due to the inherent nature of BACT evaluation. The cost of this negotiation various and is determined by the circumstances of the individual source. The proposed regulation should reduce the burden of making a BACT determination due to the changes in the permit applicability approach. The owner may opt to have a BACT evaluation or a general permit may be appropriate in some cases. Requiring controls or practices to reduce emissions as part of the permit for the construction of a new source or modification of an existing source is prudent. Balancing this need with considerations of costs to the regulated community is also a consideration and this added flexibility should assist in reducing the time for issuing a much needed permit. Category 3. The proposed regulation provides that the department may require as part of a source's MNSR permit conditions that testing, monitoring or reporting be required. These conditions will not be a part of all MNSR permits but most likely will be included when there is no other way to get emissions data or when the source must provide needed data over the operating life of the source. The costs for testing, monitoring, and reporting vary considerably from one source to another and from one pollutant to another. These requirements are not new but are a reaffirmation of authority that exists elsewhere in the regulations. A single stack test for pollutants such as particulate matter, sulfur oxides, or nitrogen dioxide may cost anywhere from $2,000 to $10,000 per pollutant depending on the pollutant emitted, stack size, and complexity of the test required. Installing continuous emission monitors for a single point in a facility may cost anywhere from $25,000 to $150,000 per pollutant, without a data acquisition system. The cost of additional reporting requirements depends entirely on the specific requirement for the source.
d. Information on the impact on small businesses as defined in § 2.2-2279	The impact upon facilities that meet the definition of small business provided in § 2.2-2279 of the Code of Virginia is addressed in item c above.
e. Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	It is not expected that the regulation will result in any cost to the Department of Environmental Quality beyond that currently in the budget. It is expected, however, that the work load will be reduced for the permit writers and inspectors

	responsible for determining compliance. The sources of Department funds to carry out this regulation are the general fund and the federal trust (grant money provided by the U.S. Environmental Protection Agency under Section 105 of the federal Clean Air Act or permit fees charged to affected entities under the permit program). The activities are budgeted under the following program (code)/subprogram (code): (i) Environmental and Resource Management (5120000)/Air Quality Stationary Source Permitting (5122000) and Air Quality Stationary Source Compliance Inspections (5122100) and (ii) Environmental Research and Planning (5130000)/Air Quality Research and Planning (5130700). The costs are expected to be ongoing.
f. Projected cost of the regulation on localities	The projected cost of the regulation on localities is not expected to be beyond that of other affected entities and are addressed in item c above.
g. Beneficial impact the regulation is designed to produce	The primary benefits as a result of the changes to this program are simpler requirements to make applicability determinations which will reduce the administrative burden of the permit program.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the proposed regulation, 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 is 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

These specific amendments are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300).

Comparison with Federal Requirements

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

Need

Please explain the need for the new or amended regulation and the potential consequences that may result in the absence of the regulation. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Identification of Specific Requirements Establishing the Need

Article 6 provides a procedural and legal basis for the issuance of MNSR permits for proposed new or expanded facilities that will (i) enable the agency to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, (ii) to assess the impact of the emissions from the facility on air quality, and (iii) provide a state and federally enforceable mechanism

to enforce permit program requirements. The regulation also provides the basis for the agency's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review.

The current program uses a permit applicability approach that looks at the changes from a source wide perspective to determine applicability to an approach which looks at each physical or operational change to the source individually to determine applicability. Currently applicability is based on the net emissions increase (NEI) in actual emissions based on all the source wide emissions changes directly resultant from the physical or operational change. While the netting concept, essential to determining applicability, works well in major NSR, it is not working in minor NSR, primarily due to the lack of an underlying permit program to make the netting operations enforceable.

Netting involves considering the emissions increases and decreases from all of the source wide emissions changes directly resultant from the physical or operational change. To lower the net emissions increase at an expanding or modernizing source below levels subject to permitting an ERC obtained at the same source may be used and thus avoid the requirements of new source review. An emission reduction credit (ERC) is a surplus emission reduction approved by the agency in accordance with the requirements of the current regulations which represents a decrease in the quantity of a pollutant discharged from a source below the allowable emissions in the current regulations or any emission limit specified as a permit condition by the approving authority.

To assure that regulatory requirements are met, each transaction which allows the use of an ERC must be approved by the state and be federally enforceable. Means of making ERCs federally enforceable include SIP revisions, EPA-approved generic trading rules, and new source preconstruction permits issued by states under EPA-approved regulations, as well as construction permits issued by EPA. ERCs should be incorporated in an enforceable compliance instrument which requires recordkeeping based on the averaging period over which the NEI is operating, so it may easily be determined over any single averaging period that the ERC limits are being met.

The netting concept, essential to determining applicability, is primarily used to avoid major NSR. It works in major NSR due to the use of minor NSR program as an underlying permit program to make the netting operations enforceable. While the netting concept works well in major NSR, it is not working in minor NSR, primarily due to the lack of an underlying permit program to make the netting operations enforceable.

The result of using the NEI approach is increased complexity of the minor NSR program and the introduction of an new burden on both the agency and regulated community. Thus, the focus of implementing the program has become the task of issuing permits rather than the environmental results.

The revised program would base permit applicability on the uncontrolled emissions from each individual physical or operational change to the source. This was the approach used prior to the change to the NEI approach and is far simpler to implement and make permit applicability determinations.

General Planning Requirements

Among the primary goals of the Clean Air Act are the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS.

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air. EPA requires that each state submit a plan (called a State Implementation Plan or SIP), including any laws and regulations necessary to enforce the plan, showing how the air pollution concentrations will be reduced to levels at or below these standards (i.e., attainment). Once the pollution levels are within the standards, the plan must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (i.e., maintenance).

A state implementation plan is the key to the air quality programs. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards - that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the Federal Clean Air Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the State to attain the air quality standards. Once the air quality standard is attained, the agency must have a program to continuously monitor air quality to ensure that it meets the standards. The agency must also have a means to monitor compliance by sources, to prevent the construction of a new or modified source if it will cause a violation of the air quality standards, and to take action as necessary to prevent air pollution levels in the air from creating an emergency condition. In addition, development and enforcement of regulations under the SIP must be continually pursued, as well as development of new plan revisions as federal laws and regulations change.

Most of the agency's regulations are designed to provide the means for implementing and enforcing control measures (primarily stationary source and some mobile source) necessary to carry out the SIP. The chief stationary source control measures are to establish emission standards for existing sources and to require a permit for new or modified sources. The new source review permit is the agency's means to limit the amount of pollutant from the source by means of new source performance standards, and in some cases, to determine its siting.

A key strategy for managing the growth of new emissions is the permit program for new and modified stationary sources. The basic program requires that owners obtain a permit from the agency prior to the construction of a new industrial or commercial facility or the expansion of an existing one. Through preconstruction technology reviews and the issuance of permits, the agency ensures that new or modified facilities progressively minimize their adverse impact upon the air quality. Therefore, the implementation of new and modified source permit program, emission increases from new and expanding stationary sources can be managed so that affected areas can attain and maintain the air quality standards and accommodate growth.

The basic program (in existence since 1972) was later supplemented by mandate of the CAA with requirements that differ according to the facility's potential to emit a specified amount of a specific pollutant and the air quality status of the various areas within the state where the facility is or will be located. Requirements for facilities considered to be major due to their potential to emit a specified pollutant are more stringent than for less polluting facilities. Requirements for major facilities located or locating in those areas which have ambient air quality concentrations that have not been maintained at or below the health-based standard for a pollutant (nonattainment areas) are considerably more stringent than for those areas which have concentrations maintained at or below the standard (prevention of significant deterioration (PSD) areas). Permits issued in nonattainment areas require the facility owner to apply control technology that meets the lowest achievable emission rate and to obtain emission reductions from existing sources in the area such that the reductions offset the increases from the proposed facility by a ratio greater than one for the emissions contributing to the nonattainment situation. Permits issued in PSD areas require the facility owner to employ control technology that is the best available and, in some cases, to monitor ambient air quality at the site where the facility will be located to determine ambient air background levels of the pollutants to be emitted.

The minor new source review (MNSR) program requires permits for new and modified stationary sources that do not qualify either as PSD or nonattainment area major sources. The MNSR program also includes exemption levels for exempting smaller sources from permit requirements even though the exempted sources, in some cases, must still meet any applicable emission standards.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Alternatives to the proposed regulation amendments were considered by the Department. The Department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to change the permit applicability approach of the permit program while satisfying the provisions of the law and associated regulations and policies. This option was chosen because it meets the stated purpose of the regulation: to simplify the program requirements and reduce the complexity of the permit program.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option was not chosen because it the regulation needs to be remain consistent with current federal requirements and the state objectives for the permit program.

3. Take no action to amend the regulations and continue to use the regulation in its current state. This option was not chosen because, without change, needless resources by the business community and department would be expended in implementing the permit program.

Impact on Family

Please assess the 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 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.

Detail of Changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Current requirement	Proposed change and rationale
80-1100 D	Fugitive emissions are included in making permit applicability determinations unless the fugitive emissions are the only emissions involved.	A minor editorial change is being made because the existing language did not reflect the intent. Changes are also being made to support the change in the permit applicability approach.
80-1100 H	Identifies how the elements of the federal hazardous air pollutant new source review program are to be implemented under this article.	Provisions are being relocated from 80-1120 H for clarity.
80-1110, definitions	See below.	See below.
Modification, actual emissions, net emissions increase, and uncontrolled emission rate.	Currently applicability for modifications is based on the net emissions increase in actual emissions based on all the source wide emissions changes directly resultant from the physical or operational change.	The revised program would base applicability only on the uncontrolled emissions from each individual physical or operational change to the source. This change is being made to reduce the complexity of the applicability determination process and the administrative burden of the regulation.
Allowable emissions	None.	Definition is being deleted because it is not used in the remainder of the article.
Applicable federal requirement	Identifies federal requirements applicable to sources.	Definition is being updated to reflect recent changes to federal regulations.
Federal hazardous air pollutant new source review program	Identifies the elements of the federal hazardous air pollutant program.	Some provisions are being deleted because they are duplicated in 80-1100 H.
Hazardous air pollutant	Identifies air pollutants subject to the federal hazardous air pollutant program.	Definition is being updated to be consistent with federal regulations.
Source category schedule for standards	Identifies the schedule for promulgating MACT standards.	Definition is being added to accommodate changes to 80-1320 F.
Stationary source	Incorporates SIC manual, with supplement, to identify regulated entities covered by regulation.	Reference to supplement is being deleted because it no longer exists.
80-1120 G	Allows permits to be issued for a project to be completed in planned incremental phases.	Changes are being made to support the change in the permit applicability approach.
80-1120 H	Identifies how the elements of the federal hazardous air pollutant new source review program are to be implemented under this article.	Provisions are being relocated to 80-1100 H for clarity.

80-1140 E	Requires certification of understanding that minor NSR application does not provide shield from applicability of major NSR program.	Provisions are being revised for clarity.
80-1160 A	Sets for the criteria for determining an application to be complete.	Provisions are being updated to reflect the recent addition of fee requirements.
80-1170 D	Specifies public participation requirements for permits issued under this article.	Provisions are being revised to make subdivision 3 consistent with the remainder of the subsection.
80-1280 A	Prohibits the use of the minor amendment process for modifications.	Provisions are being changed to allow the use of minor amendment process for modifications that would not otherwise require a permit.
80-1280 G	Sets forth the requirements for making changes under the minor amendment process.	Provisions are being changed to make a grammatical correction.
80-1290 B	Sets forth the information requirements for a request for a significant amendment.	Provisions are being changed to allow the use of the significant amendment process for modifications if the information submittal requirements for a modification are met.
80-1290 C	Requires public participation for changes to permits that originally required public participation.	Provisions are being changed to clarify that the application is subject to the public participation requirements, not the source.
80-1300 A	Sets forth the requirements for reopening and amending a permit.	Provisions are being changed (amending to revising) to avoid confusion with amendment process set forth elsewhere in regulation.
80-1320 A	Sets forth the general requirements for exemptions from permit requirements.	Two subdivisions (1 a and 2) are being combined because they operate as a unit. The exemption for reconstruction (subdivision 1 b) is being moved to subsection B because reconstructions are not allowed to be exempted from hazardous air pollutant requirements. The type of emissions to be determined for the exemption (subdivision 1 d) are being specified in order to support the change in the permit applicability approach.
80-1320 B	Sets forth the exemptions from permit requirements by source type.	The types of activities that are exempt under this subsection are being changed to delete modifications in order to support the change in the permit applicability approach. The exemption for engines and turbines (subdivision 2) is being revised or clarity. The exemption for reconstruction (subdivision 13) is being relocated from subsection A because reconstructions are not allowed to be exempted from hazardous air pollutant requirements.
80-1320 C	Sets forth the exemptions from permit requirements for new sources by emission rate.	Provisions are being changed to support the change in the permit applicability approach.

80-1320 D	Sets forth the exemptions from permit requirements for modified sources by emission rate.	Provisions are being changed to support the change in the permit applicability approach.
80-1320 F	Allows exemptions from permit requirements for sources of hazardous air pollutants if permitted by federal program.	Provisions are being changed to clarify the exemptions for sources of hazardous air pollutants if permitted by federal program. Provisions are being added to provide an exemption for sources of hazardous air pollutants for which EPA has made a formal determination that no regulation is required.
50-260	Requires that BACT determinations be made for all emissions changes to units directly resultant from the physical or operational change.	Provisions are being changed such that a BACT determination is required only for the physical or operational change. This change is being made to reduce the complexity of the BACT determination process and the administrative burden of the regulation.

New section number	New requirement	Rationale for new requirement
60-92	Incorporates by reference federal definition of hazardous air pollutant and source category schedule for standards.	Provisions are being added to support use of the terms in other parts of the regulations of the board.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than four years after the proposed regulation is expected to be effective.

The Department will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated within four years after its effective date.

The specific and measurable goals the proposed regulation amendments are intended to achieve are as follows:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. To prevent the construction, modification, or operation of facilities that will prevent or interfere with the attainment or maintenance of any ambient air quality standard through the issuance and enforcement of new source review permits.

3. To ensure that new facilities or expansions to existing facilities will be designed, built, and equipped to operate without causing or exacerbating a violation of any ambient air quality standard through the issuance and enforcement of new source review permits.

4. To ensure that new facilities or expansions to existing facilities will be designed, built, and equipped to comply with case-by-case control technology determinations and other requirements through the issuance and enforcement of new source review permits

Clarity

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

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