



Exempt Action Final Regulation Agency Background Document

Approving authority name	State Air Pollution Control Board
Primary action	Article 8, 9VAC5-80
Secondary action(s)	None
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Major NSR Permits, NOx (Rev. A08)
Date this document prepared	November 3, 2008

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 36 (06) and 58 (99)

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed.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

Article 8 establishes a new source review (NSR) permit program whereby owners of sources locating in prevention of significant deterioration (PSD) areas are required to obtain a permit prior to construction of a new facility or modification (physical change or change in the method of operation) of an existing one.

The PSD NSR program applies to the construction or reconstruction of new major stationary sources or major modifications to existing ones. The owner must obtain a permit from the board prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable the board to conduct 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 regulation also provides the basis for the board's final action (approval or disapproval) on the permit depending on the results of the preconstruction review.

The PSD NSR program requires a facility to use the best available control technology (BACT) to control emissions from the proposed facility, and requires a facility to control emissions from the proposed facility such that the air quality standards or increments are not violated

The PSD NSR program has been revised to specify that nitrogen oxides (NO_x) are a precursor of ozone in addition to volatile organic compounds (VOCs) in the definitions of “major modification,” “major stationary source,” “regulated NSR pollutant” and “significant,” and the list of exempted facilities.

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 October 23, 2008, the State Air Pollution Control Board took final action to adopt amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution", specifically Major New Source Review (9VAC5-80, Article 8). The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they 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.

In adopting these amendments, the board affirmed 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.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please identify the federal law or regulations being relied upon for the final agency action.

The text of the regulation is attached.

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. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 c of the Administrative Process Act are available upon request.

On November 29, 2005, EPA promulgated its final rule for the Phase II implementation of the 8-hour ozone standard (70 FR 71612). Among other sections, the rule affects the prevention of significant deterioration (PSD) new source review (NSR) regulations of 40 CFR 51.166 by revising the definitions of "major modification," "major stationary source," "regulated NSR pollutant" and "significant," and the list of exempted facilities, to specify that nitrogen oxides (NO_x) are a precursor of ozone in addition to volatile organic compounds (VOCs). 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.

Family Impact

Assess the impact of this 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.

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