



## Exempt Action Proposed Regulation Agency Background Document

<b>Agency name</b>	State Air Pollution Control Board
<b>Virginia Administrative Code (VAC) citation</b>	Primary action: 9VAC5-530 Secondary action(s): none
<b>Regulation title</b>	Electric Generator Voluntary Demand Response General Permit
<b>Action title</b>	Peak Shaver Generator General Permit (Rev. Dg)
<b>Date this document prepared</b>	January 5, 2011

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 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 proposed 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.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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. Section 10.1-1307.02 B 4 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) establishes the requirement to 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 Amendments of 1990. Letters providing written assurance from the Office of the Attorney General that (i) the Board has statutory authority to promulgate the proposed regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 9 of the Administrative Process Act are available upon request.

### 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

Section 10.1-1307.02 B 4 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) establishes the requirement to 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 federal Clean Air Act.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

The purpose of the regulation is to provide a streamlined process for permitting electric generating facilities that that participate in a voluntary demand response program such that the emissions from the units in no way endanger the public health. The proposed general permit contains terms and conditions as may be necessary to form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to new or modified emissions units that meet the requirements of an electric generating facility as defined in §10.1-1307.02 B 4 of the Code of Virginia.

## Substance

*Please briefly identify and explain the new substantive provisions (for new regulations), the substantive changes to existing sections, or both where appropriate.*

1. Definitions used in the regulation are identified.
2. General provisions are established which cover the overall basis, applicability and general requirements of the general permit, circumvention, suspension or revocation, compliance authority and enforcement of a general permit.
3. Procedures for obtaining the general permit are described and provide requirements for granting an authorization to operate under the general permit, applications for coverage under the general permit, required information for initial applications, authorization to operate, and transfer of authorization to operate.
4. General permit terms and conditions for using fuel throughput for compliance demonstration are established including monitoring requirements, operating limits, emissions limits, testing requirements, recordkeeping and reporting requirements.
5. General permit terms and conditions for using hours of operation for compliance demonstration are established including monitoring requirements, operating limits, emissions limits, testing requirements, recordkeeping and reporting requirements.

## 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.*

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1. Public: The primary advantage to the public is a streamlined process for permitting the minor source emissions units that participate in a voluntary demand response program. This will ensure that adequate electricity is available to commercial facilities and the citizens of Virginia during critical times when electrical demands may be significant.

2. Department: The benefit to the department will be a more efficient permitting process for the minor source emissions units that participate in a voluntary demand response program and a reduction in the number of permits that need to be modified or changed due to additions or changes at the facilities that are participating in a voluntary demand response program (i.e., load curtailment, demand response, peak shaving or like program).

**Requirements more restrictive than federal**

*Please identify and describe any requirements 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.*

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

**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.*

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Combined source-wide nitrogen oxide and volatile organic compound emissions limits for facilities located in nonattainment areas are more restrictive than for those facilities located in attainment areas. The more restrictive limits will ensure that any emissions from any facilities due to the proposed regulation will not adversely impact air quality, particularly ozone pollution, in those 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, the potential impacts of the regulation on the regulated community, and the impacts of the regulation on farm or forest land preservation.*

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In addition to any other comments, the Department is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community, and on any impacts of the regulation on farm and forest land preservation. The board is particularly interested in receiving comments regarding the hours of operation for emissions units using hours of operation for compliance demonstration operating in either attainment or nonattainment areas as the board may consider revising, either higher or lower, the number of hours of operation authorized by the general permit when final action is taken on the regulatory action. Also, the Department is seeking information on impacts to small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (1) projected reporting, recordkeeping and other administrative costs, (2) probable effect of the regulation on affected small businesses, and (3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week.

A public hearing will be held. Notice of the public hearing will appear on the Virginia Regulatory Town Hall web site ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time. All testimony, exhibits and documents received are part of the public record.

All comments requested by this document must be submitted to the agency contact: Mary E. Major, Environmental Program Manager, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov), fax 804-698-4510).

## Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

Under the traditional concept of an air permit program the enabling requirements (legal authority, processing requirements, permit content requirements, etc.) are promulgated in law or regulation and the permit itself (the legally binding document containing the terms and conditions placed upon the permittee) is promulgated in a letter, certificate or other document issued by the department. This is in contrast to the general permit (GP) program in which both the enabling requirements and the permit are promulgated in regulation. The main difference between the two is that the GP by state law must be promulgated as a regulation, while the regular permit can be issued by the state agency as a case decision.

The issuance of a general permit will reduce the staff time involved in the review of each case decision; a significant portion of that review will occur during the development of the regulation for the general permit. In addition, the issuance of this general permit will expedite the 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 federal Clean Air Act. The expedited process will also save considerable time and money for the source. The permit is designed to address both CI and SI engines and is also structured so that the source can select which method of compliance is most desirable; hours of operation or fuel throughput. Performance testing will verify the emissions thus ensuring the protection of public health.

## 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. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

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As provided in the public participation procedures of the State Air Pollution Control Board, the department included, in the Notice of Intended Regulatory Action, a description of the department's alternatives and a request for comments on other alternatives and the costs and benefits of the department's alternatives or any other alternatives that the commenters provided.

Following the above, alternatives to the proposal 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 proposal. 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. Develop a regulation to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to develop a general permit with terms and conditions as may be necessary to form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to new emissions units that meet the requirements of electric generating sources as defined in §10.1-1307.02 B 4 of the Code of Virginia.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because it would be contrary to the requirements of §10.1-1307.02 B 4 of the Code of Virginia.
3. Take no action to adopt the regulations and continue to operate under the existing regulatory program. This option is not being selected because it would also be contrary to the requirements of §10.1-1307.02 B 4 of the Code of Virginia.

## 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.*

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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.

**Public comment**

*Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.*

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No public input was received during the public comment period for this intended regulatory action.

**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.*

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It is not anticipated that these regulation amendments will have a direct impact on families.

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