



## Exempt Action Final Regulation Agency Background Document

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| <b>Agency name</b>                                 | State Air Pollution Control Board                                                 |
| <b>Virginia Administrative Code (VAC) citation</b> | 9VAC5 Chapter 85                                                                  |
| <b>Regulation title</b>                            | Permits for Stationary Sources of Pollutants Subject to Regulation                |
| <b>Action title</b>                                | Permits for Stationary Sources of Pollutants Subject to Regulation (Revision E11) |
| <b>Final agency preparation date</b>               | September 9, 2011                                                                 |
| <b>Document preparation date</b>                   | September 11, 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.*

On July 20, 2011 (76 FR 43490), the U.S. Environmental Protection Agency (EPA) promulgated final amendments to its regulations for permitting of greenhouse gases (GHGs). The purpose of the regulatory changes is to defer, for a 3-year period, the application of the Prevention of Significant Deterioration (PSD) and Title V permitting requirements to carbon dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic stationary sources in order for EPA to conduct a detailed examination of the science associated with biogenic CO<sub>2</sub>. The amendments affect the PSD NSR regulations in 40 CFR 51.166 by revising the definition of "subject to regulation." Because Virginia has the authority to directly implement federal PSD regulations as long as its rules are at least as protective as the federal, the corresponding Virginia regulation must be revised accordingly when a final federal rule is promulgated. The amendments also affect the federal operating permit (Title V) regulations in 40 CFR Part 70 by revising the definition of "subject to regulation." Virginia's federal operating permit regulations are federally approved, and must be revised accordingly when a final federal rule is promulgated.

**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 September 9, 2011, the State Air Pollution Control Board took final action to adopt regulatory amendments concerning "Permits for Stationary Sources of Pollutants Subject to Regulation," 9VAC5-85. The regulatory action is to be effective as provided in the Administrative Process Act.

The regulation is 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 it is necessary to meet the requirements of the federal Clean Air Act and does not differ materially from the pertinent 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.

**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.*

| <b>Current section number</b> | <b>Proposed new section number, if applicable</b> | <b>Current requirement</b>                                      | <b>Proposed change and rationale</b>                                                                                                                                                              |
|-------------------------------|---------------------------------------------------|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 85-30 B                       |                                                   | Terms specific to the federal operating permit program defined. | Minor technical revision; needed to make the regulation operate properly.                                                                                                                         |
| 85-30 C                       |                                                   | Terms specific to the federal operating permit program defined. | Definition of "subject to regulation" revised in order to defer the application of Title V to CO <sub>2</sub> from bioenergy sources. Needed in order to be consistent with federal requirements. |
| 85-50 B                       |                                                   |                                                                 | Minor technical revision; needed to make the regulation operate properly.                                                                                                                         |
| 85-50 C                       |                                                   | Terms specific to the PSD program defined.                      | Definition of "subject to regulation" revised in order to defer the application of PSD to CO <sub>2</sub> from bioenergy sources. Needed in order to be consistent with federal requirements.     |

**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 regulations apply to all facilities, 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.

### 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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