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Exempt Action - Final Regulation Agency Background Document

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation(s)	Article 9 of 9VAC5-80 (Permits for Stationary Sources)
Regulation title(s)	Regulations for the Control and Abatement of Air Pollution
Action title	Nonattainment New Source Review (Revision B19)
Final agency action date	December 6, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

On December 6, 2018 (83 FR 62998), the U.S. Environmental Protection Agency (EPA) finalized nonattainment area and ozone transport region (OTR) implementation requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS) that were promulgated on October 1, 2015. This rule included amendments to new source review (NSR) permitting requirements for ozone nonattainment areas found in 40 CFR 51.165. These amendments enable a permitting agency to allow offset requirements for emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOC) to be met by offsetting reductions in actual emissions of either of those precursors as established by a case-specific permit ratio for ozone. Virginia administers the nonattainment NSR program through Article 9 of 9VAC5-80 (Permits for Stationary Sources), which should be the same as or equivalent to the revised federal program, and must be amended accordingly.

A correction to the definition of "significant" is also being made at this time. Default program requirements to address VOC as a PM_{2.5} precursor as put forth in EPA's August 24, 2016 (81 FR 58010) final implementation rule for the 2012 NAAQS for very fine particulate matter (PM_{2.5}) are not appropriate nor provide any benefit to Virginia's NSR program. EPA has clarified, and the department agrees, that an emissions rate for VOC as a PM_{2.5} precursor is not as protective, transparent, quantifiable, or reliable as the original emissions rate for NO_x, particularly given the predominance of NO_x compared to VOC in the nonattainment area. The department therefore wishes to replace those provisions with the original text, which will better enable the department to ensure that PM_{2.5} emissions are properly controlled in the context of federal mandates.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

NAAQS - National Ambient Air Quality Standards

NO_x - nitrogen oxides

NSR - New Source Review

OTR - Ozone Transport Region

PM_{2.5} - very fine particulate matter

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 December 6, 2019, 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, Permits for Major Stationary Sources and Major Modifications Locating In Nonattainment Areas or the Ozone Transport Region (Article 9 of 9VAC5-80). 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 3 and 4 c of the Administrative Process Act because they consist only of the correction of a technical error, and because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. 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.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, board decision, etc.). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

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 plan must include, among other tasks, programs for the regulation and permitting of the modification and construction of any stationary source within areas covered by the plan to assure the achievement of the ambient air quality standards, including a permit program as required by Part D of the Clean Air Act.

Part D of the Clean Air Act, "Plan Requirements for Nonattainment Areas," describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1, Nonattainment Areas in General, consists of §§ 171 through 179, and provides the overall framework of what nonattainment plans are to contain, permit requirements, planning procedures, motor vehicle emission standards, and sanctions and consequences of failure to attain. Subpart 2, Additional Provisions for Ozone Nonattainment Areas, consists of §§ 181 through 185, and provides more detail on what is required of areas designated as nonattainment for ozone.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. Part D is implemented through 40 CFR 51.165, which enumerates permit requirements for nonattainment areas.

On December 6, 2018 (83 FR 62998), EPA finalized nonattainment area and ozone transport region (OTR) implementation requirements for the 2015 ozone national ambient air quality standards (NAAQS) that were promulgated on October 1, 2015. This final rule is largely an update to the implementing regulations previously promulgated for the 2008 ozone NAAQS, and addresses a range of nonattainment area and OTR plan requirements for the 2015 ozone NAAQS, including major nonattainment new source review. States that implement these federal requirements, including Virginia, must amend their regulatory requirements accordingly.

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

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 explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The regulatory changes are needed in order to meet the mandates of the federal Clean Air Act and its implementing regulations in order to protect public health and welfare from ozone air pollution, which has been proven to be detrimental to both health and welfare. The underlying federal regulations were adopted in order to implement a more stringent federal standard for protecting air quality, and states must meet these requirements accordingly. The goal of the regulatory changes is to address ozone air pollution in the Northern Virginia Ozone Nonattainment Area by controlling emissions of ozone precursors as emitted by new, major industrial sources.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The regulation is being amended to meet the requirements of 40 CFR 51.165 (a)(11) to allow offset requirements for emissions of NO_x and VOC to be met by offsetting reductions in actual emissions of either of those precursors as established by a case-specific permit ratio for ozone. The definition of "significant" is also being corrected to properly identify how to address VOC as a PM_{2.5} precursor.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

Public: Advantages to the regulated community include more certainty, as consistency with EPA requirements enables assurance regarding specific federal and state requirements. The general public will benefit from a reduction in the health and welfare effects of air pollution, as the most current ozone

standard is more protective of human health and welfare. Properly implementing federal requirements will ensure the control of ozone, which is proven to harm human health and welfare.

Department: The department will benefit by meeting its federal mandates in a consistent and clear manner.

There are no disadvantages associated with this regulatory action to either the public or the Commonwealth.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

No other state agencies will be particularly affected by this regulatory action.

Localities Particularly Affected:

The regulation amendments affect sources located in areas designated as nonattainment for ozone. The Northern Virginia Ozone Nonattainment Area consists of Arlington County, Alexandria City, Fairfax County, Fairfax City, Loudoun County, Falls Church City, Prince William County, Manassas City, and Manassas Park City.

Other Entities Particularly Affected:

There are no other entities particularly affected.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulation meets the requirements of federal law and regulation. Any less stringent compliance requirements, any delays in adopting the standards, any different compliance or reporting requirements, any substitution of performance standards, and any exemption of small businesses from these requirements will not meet the minimum requirements of federal law and regulation. Any such changes would compromise the effectiveness of the regulation in protecting the health and welfare of the public.

Detail of All Changes Made in this Regulatory Action

*Please list all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC5-80-2010 C	n/a	Definition of "significant."	Amend to limit identification of VOC as a PM _{2.5} precursor in order to be consistent with EPA regulation and policy. No impacts are anticipated.
9VAC5-80-2120 M	n/a	Requirements for offsetting emissions in nonattainment areas.	Amend to allow offset requirements for emissions of NO _x and VOC to be met by offsetting reductions in actual emissions of either of those precursors as established by a case-specific permit ratio for ozone. No significant impacts are anticipated.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential 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 the proposal will have a direct impact on families.

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