

## **REGULATION OF FEDERAL HAPS UNDER THE STATE TOXICS PROGRAM AND STATE NSR PROGRAMS**

This document provides an explanation of how federal hazardous air pollutants (HAPS) are regulated under the recently adopted state toxics program (Rev. G00) and various recently adopted new source review (NSR) programs (Revs. YY, J97, and K97)

### **Where are the applicable regulations found in the regulatory structure?**

#### Applicable State Toxic Program Regulations

- ◆ Article 4 (9 VAC 5-60-200 et seq.) of 9 VAC 5 Chapter 60 (Rev. G00)
- ◆ Article 5 (9 VAC 5-60-300 et seq.) of 9 VAC 5 Chapter 60 (Rev. G00)

#### State NSR Program Regulations

- ◆ Article 3 (9 VAC 5-60-120 et seq.) of 9 VAC 5 Chapter 60 (Rev. K97)
- ◆ Article 6 (9 VAC 5-80-1100 et seq.) of 9 VAC 5 Chapter 80 (Rev. YY)
- ◆ Article 7 (9 VAC 5-80-1400 et seq.) of 9 VAC 5 Chapter 80 (Rev. J97)

### **How are federal HAPS regulated under the state toxic program?**

Under § 112 of the Clean Air Act, EPA is authorized to regulate HAPS through the promulgation of maximum achievable control technology (MACT) standards. The list of HAPS is found in § 112(b) of the Act as modified by 40 CFR 63.60. The list of source categories for which EPA is required to promulgate MACT standards is called the source category list and is published periodically in the Federal Register (the latest being 67 FR 6521, February 12, 2002). The list of MACT source categories falls into three groups as explained below:

- A. Those source categories for which EPA has promulgated a final MACT standard in 40 CFR Part 63.
- B. Those source categories for which EPA has failed to promulgate a MACT standard.
- C. Those source categories for which EPA has determined that a standard is not necessary.

The state toxic program is now limited to regulating only federal HAPS. However, the state program uses the definition of “toxic pollutant” to identify the pollutants covered and modifies the federal list of HAPS by excluding asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®. Also, source categories in the source category list are exempt from regulation under the state toxic program as explained below:

Those source categories in group A are exempt under 9 VAC 5-60-200 C 3 and 9 VAC 5-60-300 C 3.

Those source categories in group B are exempt under 9 VAC 5-60-200 C 4 once the state has made the case-by-case MACT determination required under Article 3 (9 VAC 5-60-120 et seq.) of 9 VAC 5 Chapter 60. They are also exempt under and 9 VAC 5-60-300 C 4 provided a case-by-case MACT determination is made according to the applicable NSR regulation.

Those source categories in group C are exempt under 9 VAC 5-60-200 C 5 and 9 VAC 5-60-300 C 5.

### **How are federal HAPS regulated under the state NSR programs?**

In several programmatic regulations under the Clean Air Act, EPA requires states to conduct preconstruction reviews of proposed new facilities and expansions to existing ones and to issue legally enforceable documents that require the facilities to control emissions in accordance with the results of the reviews. For sources subject to federal hazardous air pollutant requirements, the Clean Air Act and EPA regulations provide for four different preconstruction review requirements as follows:

1. 40 CFR 61.05 through 61.08 for preconstruction review requirements under § 112(c)(1) of the Clean Air Act in existence prior to the 1990 Amendments to the Clean Air Act. (These requirements cover the sources subject to the NESHAPS in 40 CFR Part 61.)
2. 40 CFR 63.5 for preconstruction review requirements under § 112(i)(1) of the 1990 Amendments to the Clean Air Act. (These requirements cover source categories in group A discussed above.)
3. 40 CFR 63.54 for preconstruction review requirements under § 112(j)(1) of the 1990 Amendments to the Clean Air Act. (These requirements cover source categories in group B discussed above.)
4. 40 CFR 63.40 through 63.44 for preconstruction review requirements under § 112(g)(2)(B) of the 1990 Amendments to the Clean Air Act. (These requirements cover source categories in group B discussed above and the construction or reconstruction any major source of HAPS even if it is not on the source category list.)

It should be noted that EPA has no preconstruction requirements for source categories in group C discussed above.

Virginia has only three administrative mechanisms it can use to issue legally enforceable emission control requirements: orders, permits and regulations. Of the three, the most practical and appropriate mechanism for enforcing preconstruction review requirements is

the permit. Thus, to meet EPA's requirements that the emission controls be legally enforceable, the procedures for implementing the preconstruction review requirements must be included in a permit regulation.

To implement the preconstruction review requirements specified in item 4 above, the state uses a specific NSR regulation which is found in Article 7 (9 VAC 5-80-1400 et seq.) of 9 VAC 5 Chapter 80.

However, for items 1 through 3, it is more practical and expedient to use Article 6 (9 VAC 5-80-1100 et seq.) of 9 VAC 5 Chapter 80 or Minor NSR to implement the federal preconstruction requirements than to develop specific stand-alone state requirements.

Although for items 1 and 2, the Minor NSR regulation is being used to make the emission controls legally enforceable and address other permitting issues, the Minor NSR procedures are a supplement to the procedures found in the EPA regulations cited in items 1 and 2 above. Permits must be issued using the procedures from both the state and federal regulations. Where there are conflicts, this is addressed in the Minor NSR regulation. The intent of this dual procedural arrangement is to issue permits only to facilities that would be subject to the federal preconstruction requirements. The inclusion of 9 VAC 5-80-1320 F in the Minor NSR is one of the ways this is being accomplished. In essence, subsection F states that any source or portion thereof exempt from preconstruction review under the federal program is also exempt under the state program. Please note that subsection F is specifically for affected sources for which a NESHAP or MACT standard has been established but is exempt from the federal preconstruction review requirements cited in items 1 and 2.

As for item 3, permits are also issued using dual procedures but both procedures are found in state regulations, the Minor NSR regulations and Article 3 (9 VAC 5-60-120 et seq.) of 9 VAC 5 Chapter 60. There are no exemptions as such under this review; it is a major NSR program in that the requirements only apply to facilities that meet certain emission rate and other requirements.

As noted above there are no EPA preconstruction requirements for facilities in group C. While affected sources in this group are exempt from the state toxic program, they are not exempt from state NSR requirements. Permits for these sources are to be issued using only the Minor NSR procedures.