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SUBJECT: Air Guidance Memo No. APG-308:
Interpretation of 9 VAC 5-80-1695 F. – Exemption of Alternative Fuels under Major NSR

DATE: March 24, 2011

Summary: This document clarifies the implementation of the exemption for alternative fuels found in 9 VAC 5-80-1695 (Article 8 – Major New Source Review (NSR)) and 9 VAC 5-80-2140 (Article 9 – Nonattainment NSR).

Background: In 2008, the Virginia General Assembly added §10.1322.4 (Permit modifications for alternative fuels or raw materials) to the Virginia Air Pollution Control Law. This section allows a company to make a fuel switch to a demonstrated cleaner fuel without going through the permitting process. This rule permits this change only to the extent federal law or regulation allow.

Interpretation: This document clarifies that the exemption from permitting for use of alternative fuels **DOES NOT** allow a source to bypass the Major NSR process. As clearly stated in §10.1322.4 of the Virginia Code:

“Unless required by federal law or regulation, no additional permit or permit modification shall be required by the Board for the use, by any source, of an alternative fuel or raw material.”

The federal Major NSR regulations, which have been adopted by Virginia in Chapter 80 Articles 8 and 9 of the Virginia Air Pollution Control Board Regulations, establish an applicability process that a source is required to use to determine whether a permit or permit modification is required. This process includes establishing baseline actual emissions and determining if a significant increase and a significant net increase in emissions will occur as a result of the change in the process. A fuel switch would be considered such a change. The exemption stated in 9 VAC 5-80- 1695 and in 9 VAC 5-80-2140 does not allow a source to bypass the federally required applicability process which has been incorporated into the Virginia regulations. Any source switching to an alternative fuel, including those listed in §10.1322.4 of the Virginia Code, are still required to make an applicability determination under the Virginia Major NSR regulations and to obtain a permit or permit modification if needed.