



Commonwealth of Virginia

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MEMORANDUM

TO: Regional Directors
Regional Air Permit Managers
Regional Air Compliance Managers
Central Office Air Managers

CC: Jeffery A. Steers, Director of Central Operations

FROM: Michael G. Dowd, Director, Air and Renewable Energy Division *AGD*

SUBJECT: APG-200A1- Title V Air Permits Guidance Manual, Chapter 1 - Title V
Applicability & Voluntary Limits

DATE: May 28, 2019

Purpose:

The purpose of this document is to update existing guidance related to Title V applicability for a stationary source as defined in 9VAC5-80-60, how a source may take voluntary emission limits to preclude Title V, and a brief discussion on common control. The existing APG-200A - Title V Air Permits Guidance Manual was originally released in 1999 by the Virginia Department of Environmental Quality (DEQ) Office of Air Permit Programs and has been updated periodically.

Chapter 1 references the Title V requirements of the federal Clean Air Act and Article 1 of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, 9VAC5 Chapter 80. Each chapter of the existing Title V Air Permits Guidance Manual will be reviewed and updated as appropriate. Chapter 1 is the first update to be affected by the requirements under § 2.2-4002.1 of the Administrative Process Act (APA). The following updates have been made to the existing document:

Chapter 1:

1) Removed discussion of federal versus state definition of major source;

- 2) Removed discussion of source being major on basis of greenhouse gas emissions;
- 3) Removed discussion of state operating permits (SOP) and minor new source review permits regarding synthetic minor status and moved them to Chapter 11 in May 2018; and
- 4) Removed discussion of exclusionary general permits.

Electronic Copy:

Once effective, an electronic copy of this guidance will be available on:

- The Virginia Regulatory Town Hall under the Department of Environmental Quality (<http://www.townhall.virginia.gov/L/gdocs.cfm?agencynumber=440>);

Contact Information:

Please contact Amber Foster at 804-614-7974 or amber.foster@deq.virginia.gov with any questions regarding the application of this guidance.

Certification:

As required by Subsection B of § 2.2-4002.1 of the APA, the agency certifies that this guidance document conforms to the definition of a guidance document in § 2.2-4101 of the Code of Virginia.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any alternative method. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Chapter 1. Title V Applicability & Voluntary Limits

Title V Applicability Threshold

A source is subject to Title V (Article 1) if it meets certain applicability criteria. One of these criterion is a source’s potential to emit (PTE) an air pollutant(s). As defined in the Virginia regulation, Article 1, 9 VAC 5-80-60 C., PTE means “the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.”

Limitations may include, but are not limited to:

- Air pollution control equipment (e.g.,: a scrubber or a baghouse required by a federally enforceable permit condition);
- Restrictions on hours of operation (e.g.,: a permit limits operating hours of the plant to no more than 8 hours a day, 50 weeks a year);
- Restrictions on material processed or fuel used or both (e.g.,: the plant may process a maximum of 100 tons a day of raw material; or, the plant may burn a maximum of 100 gallons of fuel oil per day December to March and 1000 cubic feet of natural gas per day April to November).

Another defined term in Article 1, 9VAC5-80-60 C., is “major source.” A source is “major” and subject to the Title V program if it has a PTE of or greater than the following:

- 10 tons per year of a single hazardous air pollutant (HAP) (this includes all fugitives).
- 25 tons per year of any combination of HAP (this includes all fugitives).
- 100 tons per year of any “regulated air pollutant” other than HAPs (this includes fugitive emissions of specific source categories as described in the “Fugitive Emissions for PTE and Determining Major Source Status” section below and ozone depleting substances.
 - “Regulated air pollutant” is defined in 9VAC5-80-60 C.
- See subsections c. and d. of the “major source” definition for volatile organic compounds (VOC) and/or nitrogen oxides (NO_x) major thresholds in ozone nonattainment areas and ozone attainment areas in ozone transport regions (OTR).

Some area sources are subject to Title V permitting if the source is subject to a standard, limitation, or other requirement under §111 or §112 of the federal Clean Air Act (CAA), with some exceptions. See “Area Sources Deferred” below in the “Specific Exemptions and Deferrals from Title V Program” section.

Section §111 contains the authority for the New Source Performance Standards (NSPS) regulations and section §112 contains the authority for the Maximum Achievable Control

Technology (MACT) regulations and initial National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations.

Fugitive Emissions for PTE and Determining Major Source Status

The definition of Title V “major source” as stated in 9VAC5-80-60 C. contains a list of 26 specific source categories and two regulatory categories that require fugitive emissions to be included in PTE calculations for Title V applicability. The Title V regulation defines fugitive emissions as those “emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.”

Non-HAP Pollutants

If a source falls within one of the 26 listed source categories or any other stationary source category regulated prior to August 7, 1980 under §111 or §112 of the federal CAA, it is required to include fugitive emissions in calculations in determining PTE for Title V applicability. Those source categories promulgated under §111 or §112 AFTER August 7, 1980 do NOT have to count fugitive emissions when calculating PTE for Title V applicability (unless the source category is one of the listed 26).

HAPs

Note: Fugitive HAP emissions are always included in calculations determining PTE for TV applicability.

When the source has been determined to be subject to the Title V regulation, the source must submit an application that includes all emissions of pollutants for which the source is major and all emissions of regulated air pollutants. This means fugitive emissions must be included in the permit application to the extent quantifiable regardless of whether fugitive emissions were included in the major source determination. (9VAC5-80-90 D.1.c).

Specific Inclusion into Title V Program

Solid waste incineration units subject to 9VAC5 Chapter 40 and Chapter 50 are required to obtain a Title V permit (see 9VAC5-80-50 D.2.b.).

Specific Exemptions and Deferrals from Title V Program

Residential Wood Heaters, Asbestos, and Accidental Releases: Article 1 (9VAC5-80-50 C) contains specific exemptions for sources that would otherwise be subject to Title V. Any source subject to Title V solely because it is subject to 40 CFR 60 Subpart AAA (NSPS for New Residential Wood Heaters), 40 CFR 61 Subpart M (NESHAP for Asbestos, Standard for Demolition and Renovation), or regulations or requirements concerning prevention of accidental releases under §112(r) of the CAA is exempt from Title V. If, however, a source is subject to Title V for other reasons beyond these federal rules, applicable requirements must be included in a Title V permit.

Area Sources Deferred: Unless specifically stated by EPA in a promulgated standard under §111 or §112 *not* to be deferred, area sources subject to NSPS and MACT are to be deferred from, or exempt from, Title V initial applicability. An exception to this exemption is a municipal solid waste landfill with a design capacity greater than 2.5 million megagrams that is subject to NSPS XXX.

Area Source NESHAP: On December 19, 2005, EPA finalized permanent exemption from the Title V operating permit program for five categories of non-major (area) sources which are subject to the NESHAP. The permanently exempted area source NESHAPs are:

- Subpart M - Perchloroethylene Dry Cleaning
- Subpart N – Chromium Electroplating and Chromium Anodizing
- Subpart O – Commercial Ethylene Oxidizers
- Subpart T – Halogenated Solvent Degreasers
- Subpart RRR – Secondary Aluminum Production

Title V applicability for area source NESHAP promulgated after December 19, 2005 should be determined by reading the individual requirements for the NESHAP. Some area source NESHAP, such as the Glass Manufacturing Area Sources (40 CFR Part 63, Subpart SSSSSS), require a source to obtain a Title V permit. Refer to EPA’s list of area sources required to obtain a Title V permit on their [Compilation of Area Source Rules](#) webpage.

The following list of area source NESHAPs were **exempt** from the requirement to obtain a Title V permit unless otherwise required by law at the time this manual chapter was written. Always refer to the EPA’s current rule when working on a Title V permit to ensure the most up-to-date requirements are evaluated.

- Subpart HH - Oil & Natural Gas Production Facilities
- Subpart VVV - Publicly Owned Treatment Works
- Subpart ZZZZ – Stationary Reciprocating Internal Combustion Engines
- Subpart WWWW - Hospital Ethylene Oxide Sterilizers
- Subpart ZZZZZ - Iron & Steel Foundries
- Subpart BBBB - Gasoline Distribution Bulk Terminals, Bulk Plants, & Pipeline Facilities
- Subpart CCCCC - Gasoline Dispensing Facilities
- Subpart DDDDD – Polyvinyl Chloride & Copolymers Production
- Subpart HHHHH - Paint Stripping & Miscellaneous Surface Coating Operations
- Subpart JJJJJ - Industrial, Commercial, and Institutional Boilers
- Subpart LLLLLL – Acrylic & Modacrylic Fibers Production
- Subpart OOOOO - Flexible Polyurethane Foam Production & Fabrication
- Subpart PPPPP - Lead Acid Battery Manufacturing
- Subpart QQQQQ - Wood Preserving
- Subpart RRRRR - Clay Ceramics Manufacturing
- Subpart TTTTT - Secondary Non-Ferrous Metals Processing
- Subpart WWWW - Plating and Polishing Operations

- Subpart XXXXXX – Nine Metal Fabrication and Finishing Source Categories
- Subpart YYYYYY - Ferroalloys Production Facilities
- Subpart ZZZZZZ - Aluminum, Copper and Other Nonferrous Foundries
- Subpart AAAAAA - Asphalt Processing & Asphalt Roofing Manufacturing
- Subpart BBBBBB - Chemical Preparations Industry
- Subpart CCCCCC - Paints and Allied Products Manufacturing
- Subpart DDDDDD - Prepared Feeds Manufacturing
- Subpart VVVVVV - Chemical Manufacturing Area Sources (Note: Review 40 CFR 63.11494 (e) for further guidance)

If a deferred or exempt source is subject to Title V for other reasons beyond these federal rules, applicable requirements must be included in a Title V permit. Only those regulations that apply to the emission units that cause the source to be subject to Title V will be included in the permit.

Taking Voluntary Limits to Preclude Title V

Emission Caps (9 VAC 5-80-100)

At the request of the source, Article 1 allows the board to issue TV permits with permit conditions that establish voluntary emission caps for sources or emission units that allow the source to avoid a specific applicable requirement to which the source would otherwise be subject (e.g., a MACT). Section 9 VAC 5-80-100 B describes the criteria that must be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are and can be met permanently. The occurrences of these requests are rare.

Many sources issued a Title V permit when the Title V program was initiated found that they actually operated as a “synthetic minor” facility. This means that although the PTE at the facility meets or exceeds Title V major source thresholds, the actual operating emissions are below the Title V thresholds and they could take limits to avoid a Title V permit. [Chapter 11](#) of the Title V manual provides a more in-depth discussion of synthetic minor and the permitting options in which a facility can take to obtain that status.

Note: For voluntary emission caps already captured in a Title V permit, the significant modification procedures of Article 1 (9 VAC 5-80-230) would be used to increase the existing emissions standard(s). The newly requested emissions standard(s) must meet the criteria in subsection B. 1 – 4 of 9 VAC 5-80-100 AND the requested change would need to be reviewed for new source review.

Common Control

The question of “common control” arises when one company or facility owner constructs or operates a facility situated on land belonging to another company. Applicable requirements typically place the responsibility for compliance on the owner or manager of a source or facility. A company that owns or manages two facilities may want them regarded as separate as to avoid Title V major status for one or both of the facilities. It is important to be able to make consistent and predictable determinations of the presence or absence of common control. The position of

DEQ on the subject can be reviewed in the memo [Common Control Determinations for Title V Permit Applicability \(Memo No. 98-1002\), also known as APG-204](#). Each scenario will be different and the determination for common control will be a case-by-case decision.

The regulations specifically state that dividing up a facility in order to avoid Title V applicability is circumvention (9VAC5-80-50 E.).