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Periodic Review Report of Findings

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) citation	9VAC5-540 (Emergency Generator General Permit)
Regulation title	Regulations for the Control and Abatement of Air Pollution
Date this document prepared	November 19, 2018

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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*.

Acronyms and Definitions

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

CAA- Clean Air Act

CFR- Code of Federal Regulations

DoD- U.S. Department of Defense

EPA- U.S. Environmental Protection Agency

ISO- Independent Service Operator, as defined in Code of Virginia § 56-576, means a person that may receive or has received, by transfer pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

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.

Promulgating Entity

The promulgating entity for this regulation is the State Air Pollution Control Board.

Federal Requirements

Section 110(a) of the Clean Air Act (CAA) mandates that each state adopt and submit to the U.S. Environmental Protection Agency (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 state implementation plan shall be adopted only after reasonable public notice is given and public hearings are held. The plan shall include provisions to accomplish, among other tasks, the following:

- (1) Establish enforceable emission limitations and other control measures as necessary to comply with the provisions of the CAA, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
- (2) Establish a program for the enforcement of the emission limitations and schedules for compliance; and
- (3) Establish programs for the regulation and permitting of the modification and construction of any stationary source within the areas covered by the plan to assure the achievement of the ambient air quality standards.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of state implementation plans. These requirements mandate that any such plan shall include several provisions, as summarized below.

Subpart F (Procedural Requirements) of 40 CFR Part 51 specifies definitions of key terms, stipulations and format for plan submission, requirements for public hearings, and conditions for plan revisions and federal approval.

Subpart G (Control Strategy) of 40 CFR Part 51 specifies the description of emissions reductions estimates sufficient to attain and maintain the standards, the description of control measures and schedules for implementation, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart I (Review of New Sources and Modifications) of 40 CFR Part 51 specifies legally enforceable procedures, public availability of information on sources, identification of responsible agency, and administrative procedures.

Section 51.160 of Subpart I specifies that the plan must stipulate legally enforceable procedures that enable the permitting agency to determine whether the construction or modification of a facility, building, structure or installation, or combination of these will result in either a violation of any part of a control strategy or interference with attainment or maintenance of a national standard and, if such violation or interference would occur, the means by which the construction or modification can be prevented. The procedures must identify types and sizes of facilities, buildings, structures or installations which will be subject to review and discuss the basis for determining which facilities will be subject to review. The procedures must provide that owners of facilities, buildings, structures or installations must submit information on the nature and amounts of emissions and on the location, construction and operation of the facility. The procedures must ensure that owners comply with applicable control strategies after permit approval. The procedures must discuss air quality data and modeling requirements on which applications must be based.

Section 51.161 of Subpart I specifies that the permitting agency must provide opportunity for public comment on information submitted by owners and on the agency's analysis of the effect of construction or modification on ambient air quality, including the agency's proposed approval or disapproval. Section 51.161 also specifies the minimum requirements for public notice and comment on this information.

Section 51.162 of Subpart I specifies that the responsible agency must be identified in the plan.

Section 51.163 of Subpart I specifies that the plan must include administrative procedures to be followed in determining whether the construction or modification of a facility, building, structure or installation will violate applicable control strategies or interfere with the attainment or maintenance of a national standard.

Subpart L (Legal Authority) of 40 CFR Part 51 specifies identification of legal authority to implement plans and assignment of legal authority to local agencies.

Section 51.230 of Subpart L specifies that each state implementation plan must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

- (1) Adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;
- (2) Enforce applicable laws, regulations, and standards, and seek injunctive relief;
- (3) Obtain information necessary to determine whether air pollution sources are in compliance with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources; and
- (4) Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard.

Section 51.231 of Subpart L requires the identification of legal authority as follows:

- (1) The provisions of law or regulation which the state determines provide the authorities required under § 51.231 must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and
- (2) The plan must show that the legal authorities specified in Subpart L are available to the state at the time of submission of the plan.

State Requirements

Code of Virginia § 10.1-1300 defines pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Excess emissions from emergency generator operations are harmful to human health and can significantly interfere with the people's enjoyment of life and property.

Code of Virginia § 10.1-1307 A provides that the board may, among other activities, develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth.

Code of Virginia § 10.1-1307.02 B of the Virginia Air Pollution Control Law establishes the requirement for a general permit which provides authorization for the construction, installation, reconstruction, modification, and operation of emergency generation sources during independent service operator (ISO) declared emergencies. It includes the definition of "emergency generation source" as a stationary internal combustion engine that operates according to the procedures in the ISO's emergency operations manual during an ISO-declared emergency.

Code of Virginia § 10.1-1308 provides that the board shall have the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act.

Alternatives

Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

Alternatives to the proposal have been considered by the department. The department has determined that the retention of the regulation (the first alternative) is appropriate, as it is the least burdensome and least intrusive alternative that fully meets statutory requirements and the purpose of the regulation. The alternatives considered by the department, along with the reasoning by which the department has rejected any of the alternatives considered, are discussed below.

- 1. Retain the regulation without amendment. This option is being selected because the current regulation provides the least onerous means of complying with the minimum requirements of the legal mandates.
- 2. Make alternative regulatory changes to those required by the provisions of the legally binding state and federal mandates, and associated regulations and policies. This option was not selected because it could

result in the imposition of requirements that place unreasonable hardships on the regulated community without justifiable benefits to public health and welfare.

3. Repeal the regulation or amend it to satisfy the provisions of legally binding state and federal mandates. This option was not selected because the regulation is effective in meeting its goals and already satisfies those mandates.

Public Comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

One comment was received during the public comment period, which was held from August 6, 2018 to August 27, 2018. An informal advisory group was not formed to assist with the periodic review.

Commenter: Commander, Navy Region Mid-Atlantic.

Summary of Comment: The Department of Defense (DoD) requests the addition of language to expand the definition of "emergency" in 9VAC5-540-20 to allow DoD to use back-up generators pursuant to the emergency generator general permit when an approaching electrical storm threatens to interrupt the power supply to mission-critical equipment.

3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions, including the operation of emergency generators as an anticipatory preventive measure when an approaching electrical storm presents an unacceptable risk to mission requirements for national security, including aerospace research and communications.

Incorporation of this language will protect DoD mission-critical operations against the risk of power outages and allow the DoD to posture the system in a more reliable state.

Agency Response: In general, the Emergency Generator General Permit authorizes the use of emergency generators when the power supply is interrupted unexpectedly. Exceptions are limited to ISO-declared emergencies where load-shedding may be required to protect the electrical grid and public service emergencies where impending disasters threaten public safety and welfare. The risk of power outages due to approaching thunderstorms doesn't rise to the level of immediate threat that law and regulation deem to be an emergency. The appropriate way to authorize the use of back-up generators for non-emergency (albeit important) uses is through the New Source Review (NSR) permitting process described in 9VAC5 Chapter 80 (Permits for Stationary Sources). The NSR permitting process takes anywhere from a few weeks to a few months to negotiate and requires that the generators meet the proper air pollution technology standards. Expanding the definition of "emergency" in 9VAC5-540-20 is not necessary in order to protect the DoD's mission-critical operations.

Effectiveness

Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation enhances the Department's ability to ensure compliance with all applicable federal requirements under the CAA and specific requirements under the state code through the approval of a general permit to construct and operate a new or modified facility with actual emissions of 99 tons per year or less of regulated pollutants.

The regulation is necessary for the protection of public health and welfare, as it is needed to meet the following goals:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

2. To provide a streamlined administrative mechanism to impose general regulatory requirements on the construction and operation of non-major sources in certain source categories without burdensome and costly permit application, review, and issuance procedures.
3. To provide a mechanism to administer certain air quality control program requirements without the need for federal oversight.
4. To meet specific requirements of the Code of Virginia to develop a general permit for this source category.

The regulation is necessary for the protection of public health and welfare, as it is needed to meet the primary goals of the CAA and specific requirements of the Virginia Air Pollution Control Law.

The regulation has been effective in protecting public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in non-technical language.

Decision

Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

This regulation satisfies the provisions of the law and legally binding state and federal requirements, and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

There was one comment received that requested a change to the regulation, but none were received that were consistent with the purpose of the regulation, which is to permit the use of emergency generators in emergencies.

The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation became effective in 2011. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.