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Periodic Review and Small Business Impact Review Report of Findings

Agency name	State Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC5-85
VAC Chapter title(s)	Permits for Stationary Sources of Pollutants Subject to Regulation
Date this document prepared	September 25, 2020

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 (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CAA – Clean Air Act

CFR – Code of Federal Regulations

EPA – U.S. Environmental Protection Agency

GHGs- greenhouse gases

NSR – New Source Review

PSD – Prevention of Significant Deterioration

SIP – State Implementation Plan

tpy - tons per year

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency'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

On June 3, 2010 (75 FR 31514), the Environmental Protection Agency (EPA) promulgated final regulations for permitting for greenhouse gases (GHGs). Chapter 85 was added to the regulations of the board in order to enable permitting of GHGs for appropriate sources; this was accomplished by raising the permitting thresholds for GHGs from 100/250 tons per year (tpy) to 100,000 tpy for new prevention of significant deterioration (PSD) sources as governed under 40 CFR Parts 51 and 52, and federal operating permit (Title V) sources, and 75,000 tpy for modifications as governed under 40 CFR Parts 70 and 71. The regulations affect the PSD NSR (New Source Review) regulations in 40 CFR 51.166 by adding a definition of "subject to regulation," which includes the new thresholds, and revising the definition of "regulated NSR permit." Because Virginia is SIP (State Implementation Plan) approved for PSD--that is, it has the authority to directly implement federal PSD regulations as long as its rules are at least as protective as the federal--the corresponding Virginia regulation must correspond to the federal. The regulation also affects the federal operating permit (Title V) regulations in 40 CFR Part 70 by adding a definition of "subject to regulation," which includes the new thresholds, and revising the definition of "major source." Virginia's federal operating permit regulations are federally approved, and must be at least as protective as the federal.

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 of regulated air pollutants from permitted new and modified sources are harmful to human health and can significantly interfere with the people's enjoyment of life and property.

Code of Virginia § 10.1- 1308 A gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth."

Alternatives to Regulation

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 does not meet federal mandates, which 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

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

No comments were received during the public comment period. An informal advisory group was not formed for purposes of this periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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 Clean Air Act (CAA) and specific requirements under the state code through the issuance and enforcement of federal and state operating permits to construct and operate a new or modified facility. The regulation has been effective in achieving its specific and measurable goals, which are as follows:

1. To protect public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To prevent the construction, modification, or operation of major facilities that will prevent or interfere with the attainment or maintenance of any ambient air quality standard.
3. To ensure that major new facilities or major expansions to existing facilities will be designed, built, and equipped to operate without causing or exacerbating a violation of any ambient air quality standard.
4. To ensure that major new facilities or major expansions to existing facilities will be designed, built, and equipped to comply with case-by-case control technology determinations and other requirements.
5. To ensure that there is no significant deterioration of air quality in Virginia's national parks and throughout the Commonwealth.
6. To provide an administrative mechanism to impose source-specific regulatory requirements with the flexibility to address the individual needs of sources.
7. To provide a mechanism to administer certain air quality control program requirements without the need for federal oversight.
8. To identify and clarify for the Department and source owner exactly which air quality program requirements are applicable to the permitted source.

The Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written 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

Explain the basis for the promulgating agency'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, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

This regulation continues to be needed. This regulation enables the permitting of greenhouse gasses for appropriate sources.

No comments were received that indicate a need to repeal or revise the regulation.

The regulation’s level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

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

This chapter was last amended in 2014.

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 enable the permitting of greenhouse gasses for appropriate sources.

The department, through examination of the regulation, 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.

Family Impact

Please assess the potential impact of the regulation’s impact on the institution of the family and family stability.

It is not anticipated that this regulation will have a direct impact on families.