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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC5-510
VAC Chapter title(s)	General Permit for Nonmetallic Mineral Mining
Date this document prepared	October 1, 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.

CFR- Code of Federal Regulations

EPA- Environmental Protection Agency

NSPS- New Source Performance Standards

VTCA- Virginia Transportation Construction Alliance

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.

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 particulate matter from nonmetallic mineral processing facilities 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 § 10.1-1308 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.

Promulgating Entity

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

Federal Requirements

Section 110(a) of the federal Clean Air Act mandates that each state adopt and submit to the 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 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 Act, including economic incentives such as fees, marketable permits, and auctions of emissions rights;
2. Establish schedules for compliance;
3. Prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and
4. Require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

Section 110(j) specifies that, as a condition for issuance of any permit required under this title, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is proposed will enable the source to comply with the standards of performance which are to apply to the source and that the construction or modification and operation of the source will be in compliance with all other requirements of the Act.

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, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, 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) specifies legally enforceable procedures, public availability of information on sources, identification of responsible agency, administrative procedures, stack height procedures, permit requirements, and requirements for prevention of significant deterioration of air quality.

Subpart K (Source Surveillance) specifies procedures for emissions reports and recordkeeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies that the state implementation plan must show that the state has legal authority to implement the plans, including the authority to:

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. Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;
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;
5. 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;
6. Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and
7. Make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority: (i) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and (ii) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Section 111 of the Act requires that EPA develop standards of performance for new stationary sources (that is, new source performance standards, or NSPSs). Section 111(c)(1) provides that each state may develop and submit to EPA a procedure for implementing and enforcing the NSPSs. If EPA finds the state procedure adequate, the state is delegated the authority to implement and enforce the NSPSs. The Standards of Performance for New Stationary Sources are found in 40 CFR Part 60. NSPSs have been established for over 60 sources; Part 60 also contains provisions regarding notification and recordkeeping, performance tests, availability of information, state authority, compliance with standards and maintenance requirements, circumvention, monitoring requirements, modifications, reconstruction, and general control device requirements, as well as numerous test methods and performance specifications.

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 changes to the regulation other than 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 this 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.

An informal advisory group was not formed for purposes of this periodic review. Comments were received during the public comment period.

Commenter	Comment	Agency response
Walter Beck, Vulcan Materials Company	This regulation is a useful and effective permitting mechanism that both consolidates relevant regulatory requirements while providing the regulated community and efficient permitting process. Vulcan does not see a pressing need to open the permit at this time.	The agency agrees that this regulation is an effective permitting mechanism and agrees there is no need to revise the permit at this time. The regulation is being retained.
Walter Beck, Vulcan Materials Company	If the regulation is amended, Vulcan believes the regulation should be amended to allow non-metallic mineral processing facilities that do not operate crushers to be covered under this permit.	The agency agrees with the commenter's previous statement that the regulation is an effective permitting mechanism and there is no pressing need to amend the regulation at this time. The regulation is being retained.
Walter Beck, Vulcan Materials Company	The 40 CFR Part 60 Subpart OOO April 2008 revisions removed the requirement for NSPS notices to be submitted to EPA in authorized states. If the regulation is amended, it should be amended to include this change.	The agency agrees with the commenter's previous statement that the regulation is an effective permitting mechanism and there is no pressing need to amend the regulation at this time. The regulation is being retained.

<p>Walter Beck, Vulcan Materials Company</p>	<p>The 40 CFR Part 60 Subpart OOO April 2008 revisions removed the requirement for the submission of a 30-day construction notice. If the regulation is amended, this change should be included in this regulation. If the regulation is amended, it should be amended to include this change.</p>	<p>The agency agrees with the commenter's previous statement that the regulation is an effective permitting mechanism and there is no pressing need to amend the regulation at this time. The regulation is being retained.</p>
<p>Walter Beck, Vulcan Materials Company</p>	<p>The 40 CFR Part 60 Subpart OOO April 2008 revisions changed the test notice requirements for visible emissions to require such notice to be submitted at least 7 days prior to the test date. If the regulation is amended, it should be amended to include this change.</p>	<p>The agency agrees with the commenter's previous statement that the regulation is an effective permitting mechanism and there is no pressing need to amend the regulation at this time. The regulation is being retained.</p>
<p>Rob Lanham, Virginia Transportation Construction Alliance (VTCA)</p>	<p>In general the Aggregate Producer members of VTCA support the regulation as written, and propose retaining the regulation in its current form.</p>	<p>The agency agrees that this regulation should be retained in its current form. The regulation is being retained.</p>
<p>Rob Lanham, Virginia Transportation Construction Alliance</p>	<p>If the result of the periodic review is to amend the regulation, VTCA Aggregate Producers wish to be included on any advisory committee is formed</p>	<p>The agency agrees with the commenter's previous statement that the regulation should be retained in its current form. A regulatory action is not being initiated to amend this regulation at this time and the agency is not soliciting volunteers for an advisory committee for this regulation. The agency utilizes the Virginia Regulatory Town Hall website to notify the public of any opportunities to serve on advisory panels. The agency encourages all individuals to register to receive email notifications from the Virginia Regulatory Town Hall website concerning agency regulations.</p>
<p>Rob Lanham, Virginia Transportation Construction Alliance</p>	<p>Aggregate producers do have concerns with the definition of Nonmetallic Mineral Processing Facility and DEQ's interpretation of what determines what facilities qualify and do not qualify to operate under the general permit. If the result of the periodic review is to retain the regulation as is, VTCA Aggregate Members wish to continue discussions with DEQ and the Air Pollution Control Board to clarify that operations that do not employ crushers or grinders can qualify to operate under this current general permit.</p>	<p>The agency will continue to answer questions concerning the applicability requirements of this general permit consistent with the definition of nonmetallic mineral processing facility in this regulation.</p>

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.

The regulation has been effective in protecting public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. The regulation is clearly written and easily understandable by the individuals and entities affected.

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 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. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality.

Comments were received from the Virginia Transportation Construction Alliance and the Vulcan Construction Materials, LLC. Both commenters support the regulation as written but provided suggested changes to the regulation if the result of the periodic review is to amend 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. As previously mentioned, the regulation embodies regulatory provisions found elsewhere in the air regulatory program; Article 14 (Sand and Gravel Processing Operations and Stone Quarrying and Processing Operations) of 9VAC5-40 via the state operating permit program and Article 5 (Environmental Protection Agency Standards of Performance for New Stationary Sources) of 9VAC5-50 via the minor NSR program.

This regulation may reduce costs for manufacturers and in most cases has a beneficial impact by lowering the permitting costs to the regulated entity. By choosing to take a minor NSR general permit over a conventional minor NSR permit, the applicant:

- is able to receive the permit faster,
- avoids the time consuming application process, and
- avoids the uncertainty associated with having to negotiate and accept a new BACT determination which may likely result in more stringent requirements than the general permit.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. Regulated entities may choose to obtain an individual permit in lieu of complying with the general permit.

This chapter became effective in 2002 and has not been amended.

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.

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.