



Exempt Action Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Air Pollution Control Board
Primary action	9VAC5-540
Secondary action(s)	None
Regulation title	Regulations for the Control and Abatement of Air Pollution
Action title	Emergency Energy Generator General Permit (Rev. Eg) New regulation
Date this document prepared	January 13, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed action is to develop a general permit with terms and conditions as may be necessary to form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to new emissions units that meet the requirements of an emergency energy generation source as defined in §10.1-1307.02 of the Code of Virginia.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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. Section 10.1-1307.02 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) establishes the requirement to

develop a general permit(s) authorizing a streamlined permitting process for qualified emergency energy generation during an independent system operator (ISO) declared emergency as defined in §56-576 of the Code of Virginia.

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 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) 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) 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) 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) 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

Section 10.1-1307.02 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) establishes the requirement to develop a general permit for generation of electricity during an ISO-declared emergency.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the proposal is developed.

General Planning Requirements

Among the primary goals of the federal Clean Air Act are the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and the prevention of significant deterioration (PSD) of air quality in areas cleaner than the NAAQS.

The NAAQS, developed and promulgated by the U.S. Environmental Protection Agency (EPA), establish the maximum limits of pollutants that are permitted in the outside ambient air. EPA requires that each state submit a plan (called a State Implementation Plan or SIP), including any laws and regulations necessary to enforce the plan, that shows how the air pollution concentrations will be reduced to levels at or below these standards (attainment). Once the pollution levels are within the standards, the SIP must also demonstrate how the state will maintain the air pollution concentrations at the reduced levels (maintenance).

The PSD program is designed to protect air quality in areas where the air is cleaner than required by the NAAQS. The program has three classifications for defining the level of allowable degradation: Class I is the most stringent classification, allowing for little additional pollution, while Class III allows the most. All of Virginia is classified at the moderate level, Class II, with the exception of two Class I federal lands.

A SIP is the key to the state's air quality programs. The Clean Air Act is specific concerning the elements required for an acceptable SIP. If a state does not prepare such a plan, or EPA does not approve a submitted plan, then EPA itself is empowered to take the necessary actions to attain and maintain the air quality standards--that is, it would have to promulgate and implement an air quality plan for that state. EPA is also, by law, required to impose sanctions in cases where there is no approved plan or the plan is not being implemented, the sanctions consisting of loss of federal funds for highways and other projects and/or more restrictive requirements for new industry. Generally, the plan is revised, as needed, based upon changes in the federal Clean Air Act and its requirements.

The basic approach to developing a SIP is to examine air quality across the state, delineate areas where air quality needs improvement, determine the degree of improvement necessary, inventory the sources contributing to the problem, develop a control strategy to reduce emissions from contributing sources enough to bring about attainment of the air quality standards, implement the strategy, and take the steps necessary to ensure that the air quality standards are not violated in the future.

The heart of the SIP is the control strategy. The control strategy describes the emission reduction measures to be used by the state to attain and maintain the air quality standards. There are three basic types of measures: stationary source control measures, mobile source control measures, and transportation source control measures. Stationary source control measures are directed at limiting emissions primarily from commercial/industrial facilities and operations and include the following: emission limits, control technology requirements, preconstruction permit programs for new industry and expansions, and source-specific control requirements. Stationary source control measures also include area source control measures which are directed at small businesses and consumer activities. Mobile source control measures are directed at tailpipe and other emissions primarily from motor vehicles and include the following: Federal Motor Vehicle Emission Standards, fuel volatility limits, reformulated gasoline, emissions control system anti-tampering programs, and inspection and maintenance programs. Transportation source control measures limit the location and use of motor vehicles and include the following: carpools, special bus lanes, rapid transit systems, commuter park and ride lots, bicycle lanes, signal system improvements, and many others.

Federal guidance on states' approaches to the inclusion of control measures in the SIP has varied considerably over the years, ranging from very general in the early years of the Clean Air Act to very specific in more recent years. Many regulatory requirements were adopted in the 1970s when no detailed guidance existed. The legally binding federal mandate for these regulations is general, not specific, consisting of the Clean Air Act's broad-based directive to states to attain and maintain the air quality standards. However, in recent years, the Clean Air Act, along with EPA regulations and policy, has become much more specific, thereby removing much of the states' discretion to craft their own air quality control programs.

Generally, a SIP is revised, as needed, based upon changes in air quality or statutory requirements. For the most part the SIP has worked, and the standards have been attained for most pollutants in most areas.

Specific Planning Requirements

The Commonwealth implements many permitting programs to address the need to control emissions from stationary sources, one of the three control strategies identified in the SIP. One such program is the minor new source review program which involves a preconstruction review for new and modified sources which do not qualify for review under the major new source review program and implements the requirements of §§ 110 (a)(2)(C) and 112 of the federal Clean Air Act and associated regulations. This program is codified in Article 6 (9 VAC 5-80-1100 et seq).

Under this program the owner is required to obtain a permit prior to construction of a new facility or modification (physical or operational change) of an existing one. The owner of the new or modified source must provide information as may be needed to enable the board to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards, and if requested, to assess the impact of the emissions from the facility on air quality. The owner must use the best available control technology (BACT) to control emissions from the facility, and must control emissions from the facility such that the air quality standards are not violated.

During the 2009 session of the General Assembly legislation was passed which mandated a general permit for generation of electricity during an independent system operator (ISO) declared emergency; that is, a condition that exists when the ISO (defined in § 56-576 of the Code of Virginia) notifies electric utilities that an emergency exists or may occur. The permit must include a definition of “emergency” that is compatible with the ISO’s emergency operations manual.

The general permit developed by the board will:

1. Protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth,
2. Identify and clarify for the Department and source owner exactly which air quality program requirements are applicable to the permitted facility, and
3. Minimize the regulatory burden of the new source review permit program on the permitted facility.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The proposed general permit will establish terms and conditions that form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to new and existing emissions units which generate electricity during an independent system operator (ISO) declared emergency. Application for coverage under the general permit is voluntary; otherwise affected sources will be required to apply for coverage under the minor new source review program. The general permit requires the owners of existing and new emissions units which generate electricity during an ISO-declared emergency to construct, install, reconstruct, modify, and operate within the terms and conditions of the general permit. The terms and conditions of the general permit cover emission standards, emission testing, emission monitoring, recordkeeping, reporting, compliance and enforcement.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Alternatives to the proposal are being considered by the Department. The Department has tentatively determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulatory action. The alternatives being considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Develop regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: develop a general permit to implement all regulatory and statutory requirements applicable to new and existing emissions units that meet the requirements of an emergency energy generation unit as defined in §10.1-1307.02 of the Code of Virginia.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being selected because a general permit for emergency energy generation must remain consistent with current federal and state permit requirements and the legislative objectives for the permit program.
3. Take no action to amend the regulations and continue to operate without a streamline approach for a general permit for emergency energy generation during times of an ISO declared emergency. This option is not being selected because it would contradict a specific directive by the legislature and result in needless resources expended and time wasted by both the regulated community and the department by implementing the current permit program during times of an ISO declared emergency.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The Department is seeking comments on the intended regulatory action, including but not limited to (1) ideas to assist in the development of the proposal, (2) the costs and benefits of the alternatives stated in this background document or other alternatives, (3) potential impacts of the regulation, and (4) impacts of the regulation on farm and forest land preservation. The Department is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs, (ii) probable effect of the proposal on affected small businesses, and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email, or fax to the staff contact listed below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory

Town Hall web site at: www.townhall.virginia.gov. Written comments must include the full name, address and telephone number of the person commenting and be received by the Department by the close of the comment period. Commenters submitting faxes are encouraged to provide the signed original within one week. All testimony, exhibits and documents received are part of the public record.

All comments requested by this document must be submitted to the agency contact: Mary E. Major, Environmental Program manager, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218 (email Mary.Major@deq.virginia.gov, fax 804-698-4510).

Public hearing at proposed stage

A public hearing will be held after publication of the proposed stage of the regulatory action.

Technical Advisory Committee

A technical advisory committee will be involved in the development of the regulation.

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization they represent (if any). Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: (1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; (2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; (3) strengthen or erode the marital commitment; and (4) increase or decrease disposable family income.

It is not anticipated that the proposal will have a direct impact on families. However, there will be positive indirect impacts in that the proposal will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.