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west virginia department of environmental protection

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# Response to Public Comment

## **Class II General Permit Number G60-C Class I General Permit Number G65-C**

**for the  
Prevention and Control of Air Pollution in regard to the  
Construction, Modification, Relocation, Administrative Update and  
Operation of Emergency Generators**

Date: May 21, 2009

## **Response to Public Comment**

The West Virginia Division of Air Quality (DAQ) has developed this *Response to Public Comment* regarding the draft *Class I and Class II General Permit for the Prevention and Control of Air Pollution in regard to the Construction, Modification, Relocation, Administrative Update and Operation of Emergency Generators*. This document serves to provide agency response to public comment. Pursuant to 45CSR13-6.5., DAQ has reviewed and appropriately addressed comments received by the public. Below are received comments, the DAQ response and action(s) taken.

### **Comment #1**

NSPS provisions in Section 8.2.4 and 8.2.6(d) are included in the general permit and are not applicable to emergency generators. These sections should be deleted from the general permits.

#### **DAQ Response**

Sections 8.2.4 and 8.2.6(d) do contain provisions for emergency engines, therefore, this section will remain.

#### **DAQ Action**

None.

### **Comment #2 (Section 2.9 Duty to Comply, Section 2.10 Inspection and Entry, Section 2.11 Need to Halt or Reduce Activity not a Defense, Section 2.12 Emergency, Section 2.13 Duty to Provide Information, Section 2.17 Property Rights)**

The above-referenced subsections of Section 2.0 (General Conditions) contain language taken directly from DAQ's regulations for Title V operating permits located at W.Va. Code §45-30-5. The regulation under which DAQ is acting to issue the proposed Draft General Permit does not contain parallel requirements. See 45 CSR 13.

The West Virginia Administrative Procedure Act ("WVAPA") defines "rule" to include "every regulation, standard or statement of policy or interpretation of general application and future effect, including the amendment or repeal thereof, affecting private rights, privileges or interests ... adopted by an agency to implement, extend, apply, interpret or make specific the law enforced or administered by it or to govern its organization or procedure..." W.Va. Code § 29A-1-2(i) (emphasis supplied). IOGA respectfully submits that DAQ's practice of uniformly inserting this language in permits issued under an authority *other than* Title V constitutes a *de facto* rulemaking by the agency, and thus DAQ must engage in the formal rulemaking process set forth in W.Va. Code § 29A-3-1 *et seq.* Until the rulemaking process has been completed, therefore, the agency's uniform application of its Title V regulations to permits issued under 45 CSR 13 in violation of the WVAPA.

### **DAQ Response**

These are part of WVDAQ standard language for pre-construction permits as provided in 45CSR13. Therefore, DAQ believes these paragraphs are necessary and will retain them in this general permit.

### **DAQ Action**

None.

### **Comment #3 (Section 3.1.1 Open Burning, Section 3.1.2 Open Burning Exemptions, Section 3.1.3 Asbestos)**

IOGA objects to the inclusion of the above-referenced provisions related to open burning and asbestos on the ground that they are not relevant to the emissions sources covered by the Draft General Permit. Accordingly, we respectfully request that DAQ delete these provisions.

### **DAQ Response**

These are part of WVDAQ standard language for pre-construction permits as provided in 45CSR13. Additionally, these paragraphs are included in the event the applicant proposes a modification or relocation of an affected engine which could potentially include activities governed by the paragraphs. Therefore, DAQ believes these paragraphs are necessary and will retain them in this general permit.

### **DAQ Action**

None.

### **Comment #4 (Section 3.1.5 Permanent Shutdown)**

In its current form, Section 3.1.5 provides that a source that has not been operated for at least 500 hours in one 12 month period within the previous 5 year period may be considered permanently shut down, unless the operator provides information to the contrary to the Secretary. Accordingly, in order to resume operation of such a source, the operator may have to reapply for General Permit G33-A. We emphasize the peculiar nature of the small compressor engines regulated by the Draft General Permit, and note that circumstances may require that a well be shut in and the compressor go unused for an extended period. For these reasons, IOGA believes that the Permanent Shutdown provisions should not apply to these circumstances and respectfully requests that DAQ include the following sentence at the end of Section 3.1.5 expressly exempting this provision as to covered engines shut down for these reasons: "This provision does not apply to natural gas compressor engines that are shut down for routine operational reasons, including, but not limited to, capacity issues, low gas flow, and routine repairs."

### **DAQ Response**

These instances would not require application for a new permit. When these instances occur, the source would only need to provide to the Secretary, with reasonable specificity, information to the contrary.

45CSR13 Section 10.5 states, “A source which has not operated at least 500 hours in one 12-month period within the previous five (5)-year time period may be considered permanently shutdown, unless such source can provide to the Secretary, with reasonable specificity, information to the contrary. All permits or general permit registrations may be modified or revoked and/or reapplication or application for new permits may be required for any source determined to be permanently shutdown.”

**DAQ Action**

None.

**Comment #5 (Section 3.6.5.b Operating Fee)**

This section requires that the permittee submit a certified emissions statement and pay fees on an annual basis in accordance with 45 CSR 30. As neither of the Draft General Permits applies to major sources under 45 CSR 30, IOGA believes that these requirements are inappropriate and respectfully requests the deletion of Section 3.6.5.b from the Draft General Permits.

**DAQ Response**

Since the source could be subject to 40CFR60 Subpart IIII or 40CFR60 Subpart JJJJ, it is a non-major source subject to 45CSR30. Currently sources subject to NSPS are deferred Title V sources. Until EPA would exempt these sources they are considered deferred Title V sources. Therefore, the registrant would be required to pay fees on an annual basis in accordance with 45CSR30. For Title V deferred sources the annual fees would be based on the larger of Rule 22 fees (either category 8D (\$500), 9M (\$200)) or Rule 30 (emissions based ).

**DAQ Action**

None.

**Comment #6 (Section 4.2.5, 4.2.6, 4.2.7 and 4.2.8 Requirements relating to incinerators and thermal oxidizers)**

IOGA objects to the inclusion of the above-referenced provisions containing emissions requirements for incinerators and thermal oxidizers on the ground that they are not relevant to emissions sources covered by the Draft General Permits. Accordingly, we respectfully request that DAQ delete these provisions.

**DAQ Response**

The sections mentioned above do contain provisions that are not applicable to emergency generators.

**DAQ Action**

All sections mentioned above have been removed in their entirety.

### **Comment #7 (Section 5.0 Source Specific Requirements (RICE))**

IOGA respectfully requests clarification from DAQ regarding the agency's rationale for including Section 5.0 in the Draft General Permits.

With regards to specific provisions of Section 5.0, Section 5.1.3 provides that a covered reciprocating internal combustion engine may not exceed the maximum fuel consumption listed in an operator's permit registration application without effecting a modification or administrative update for that engine. Due to potential changes in gas composition that might affect maximum fuel consumption, IOGA respectfully request that DAQ modify Section 5.1.3 to allow a 10% "safety" factor or margin of error, or to allow operators to rely on manufacturers' specifications with regard to maximum fuel consumption as a shield. This approach would reduce the burden on both operators and the agency by minimizing the number of modifications and/or administrative updates to be submitted and processed.

#### **DAQ Response**

The general language in Section 5 is applicable to all sources applying for registration under this general permit.

It is the responsibility of the applicant to list their maximum fuel consumption in their application, and all emissions calculations should be based on these values. It is common practice amongst engine manufacturers to provide this value at various loads, including full load, on the engine specification sheet. Therefore, the applicant should register their engines at maximum fuel consumption.

#### **DAQ Action**

None.

### **Comment #8 (Section 7.1.3 Recycled or Used Oil)**

Section 7.1.3.a and 7.1.3.b purport to regulate how the permittee can "receive, store, burn or fire" recycled or used oil in connection with its operation of emergency generators covered by the Draft General Permits. IOGA respectfully submits that standards for the management of used oil have been promulgated under 40 CFR Part 279 (and incorporated by reference under W.Va. Code 33-20-14.1), and therefore the language in these provisions relating to *receipt and storage* of recycled or used oil is unnecessary and outside the scope of the Draft General Permits. Accordingly, IOGA requests that DAQ revise Sections 7.1.3.a and 7.1.3.b to address only the burning or firing of recycled or used oil in emergency generators covered by the Draft General Permits.

#### **DAQ Response**

As allowed under 45CSR13 Section 5.12.a, the DAQ developed General Permit G60-C and G65-C and set the parameters for which this general permit would apply.

As you referenced, recycled oil is regulated under 40 CFR Part 279. Section 7.1.3 precludes the registrant from receiving, storing, burning or firing any recycled oil or used oil in the emergency generator which is considered a hazardous waste or does not meet the used oil specification under that rule. This language is provided so the registrant is aware that a G33-A registration cannot be used to store recycled oil or used oil that does not meet that specification.

**DAQ Action**

None.

**Comment #9 (Section 7.2.1.a Stack Testing)**

IOGA notes that Section 7.2.1.a is completely duplicative of Section 3.4.1.c, which is applicable to *all* sources covered by the Draft General Permits. Accordingly, IOGA respectfully requests that Section 7.2.1.a is unnecessary and should be deleted from the Draft General Permits.

IOGA further notes that the first sentence of Section 7.2.1 repeats nearly verbatim the first sentence of the introductory language of Section 7.2. Accordingly, IOGA recommends the deletion of the first sentence of Section 7.2.1.

IOGA urges DAQ to review the provisions relating to stack testing found in Sections 3.4.1 and 7.2.1 to eliminate unnecessary duplication and to avoid confusion.

**DAQ Response**

Section 7.2.1.a and Section 3.4.1.c does contain the same language, and therefore Section 7.2.1.a is unnecessary.

The first sentence of Section 7.2.1 and the first sentence of Section 7.2 were essentially the same, and therefore unnecessary.

**DAQ Action**

Section 7.2.1.a was removed.

The first sentence of Section 7.2.1 was removed.

**Comment #10 (Sections 7.2.5, 7.2.6, 7.2.7 and 7.2.8 (Performance testing requirements for sources with displacement of less than 30 liters per cylinder))**

The above-referenced provisions set forth the performance testing requirements for covered sources with a displacement of less than 30 liters per cylinder, as contained in 40 CFR § 60.4212(a)-(d) and referenced in Section 7.2.4 of the Draft General Permits. For purposes of clarity, therefore, IOGA suggests that DAQ inset and re-designate Sections 7.2.5, 7.2.6, 7.2.7, and 7.2.8 as Sections 7.2.3.a, 7.2.3.b, 7.2.3.c and 7.2.3.d respectively. Such a change will require the renumbering of the remaining paragraphs of Section 7.2 accordingly.

**DAQ Response**

The DAQ agrees with this suggestion.

**DAQ Action**

Sections 7.2.5, 7.2.6, 7.2.7 and 7.2.8 will be re-designated as Sections 7.2.4.a, 7.2.4.b, 7.2.4.c and 7.2.4.d.

**Comment #11 (Sections 7.2.10, 7.2.11, 7.2.12 and 7.2.13 (Performance testing requirements for sources with displacement greater than or equal to 30 liters per cylinder))**

The above-referenced provisions set forth the performance testing requirements for covered sources with a displacement of less than 30 liters per cylinder, as contained in 40 CFR § 60.4212(a)-(d) and referenced in Section 7.2.4 of the Draft General Permits. For purposes of clarity, therefore, IOGA suggests that DAQ inset and re-designate Sections 7.2.10, 7.2.11, 7.2.12 and 7.2.13 as Sections 7.2.4.a, 7.2.4.b, 7.2.4.c and 7.2.4.d respectively.

**DAQ Response**

The DAQ agrees with this suggestion.

**DAQ Action**

Sections 7.2.10, 7.2.11, 7.2.12 and 7.2.13 will be re-designated as Sections 7.2.5.a, 7.2.5.b, 7.2.5.c and 7.2.5.d.