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Exempt Action: Final Regulation Agency Background Document

Agency name	Department of Environmental Quality for Air Pollution Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC5-80 and 9VAC5-540
VAC Chapter title(s)	9VAC5-80, Permits for Stationary Sources; 9VAC5-540, Emergency Generator General Permit
Action title	Amend existing regulations regarding the use of emergency generators at certain military installations (Rev. B25)
Final agency action date	May 21, 2025
Date this document prepared	May 19, 2025

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

Chapter 344 of the 2025 Virginia Acts of Assembly (SB 1407) requires that 9VAC5-80 (Permits for Stationary Sources) and 9VAC5-540 (General Permit for Emergency Generators) shall allow any affected emergency generator to operate up to 50 hours per year for nonemergency purposes, including planned outages and switch gear and related electrical system testing, so as to be consistent with the U.S. Environmental Protection Agency's National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines pursuant to 40 CFR Part 63 Subpart ZZZZ and New Source Performance Standards pursuant to 40 CFR Part 60 Subparts IIII and JJJJ. An affected emergency generator is any emergency generator, whether or not located on a military installation as defined in § 15.2-2201 of the Code of Virginia, that has been certified to the Department of Environmental

Quality (DEQ) by the U.S. Department of Defense or relevant branch of the United State Armed Forces as mission-critical and essential to the defense of the United States.

Chapter 344 further requires that the provisions of this act shall be incorporated into 9VAC5-80 and 9VAC5-540 by the DEQ, which shall promulgate regulations to implement the provisions of this act without further action by the State Air Pollution Control Board. Such incorporation and promulgation by DEQ shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and shall become effective upon submission for publication in the Virginia Register of Regulations. Finally, Chapter 344 provides that an emergency exists and this act is in force from its passage.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

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Chapter 344 further requires that the provisions of this act shall be incorporated into 9VAC5-80 and 9VAC5-540 by the DEQ, which shall promulgate regulations to implement the provisions of this act without further action by the State Air Pollution Control Board. Such incorporation and promulgation by DEQ shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and shall become effective upon submission for publication in the Virginia Register of Regulations. Finally, Chapter 344 provides that an emergency exists and this act is in force from its passage.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”

On May 21, 2025, the Department of Environmental Quality (DEQ), as directed by Chapter 344 of the 2025 Acts of Assembly, took final action to amend Permits for Stationary Sources (9VAC5-80) and Emergency Generator General Permit (9VAC5-540). The regulatory action shall become effective upon submission for publication in the Virginia Register of Regulations as provided in Chapter 344.