



October 6, 2016

To: Division of Air Pollution Control Staff

From: Michelle W. Owenby 
Director and Technical Secretary

Subject: Permit-by-Rule Transition Program for constructing and/or operating a stationary emergency engine or gasoline dispensing facility without an air quality permit - REVISED

Persons that intend to construct a source of air contaminants must first obtain a construction permit pursuant to Tenn. Comp. R. & Regs. 1200-03-09-.01, unless specifically exempted in Tenn. Comp. R. & Regs. 1200-03-09-.04. Persons planning to operate a source of air contaminants must apply for and obtain an operating permit from the Technical Secretary pursuant to Tenn. Comp. R. & Regs. 1200-03-09-.02.

This memorandum establishes a Permit-by-Rule Transition Program for certain facilities that have constructed and/or operated a stationary emergency engine or gasoline dispensing facility (GDF) without first obtaining the required air quality construction and/or operating permit. The background, rationale, criteria, and procedures concerning this transition program are described below.

This memo updates and supersedes a memorandum dated August 18, 2016. The purpose of this revised memo is to clarify applicability of federal regulations for stationary emergency engines that were manufactured before June 12, 2006. Applicability to federal regulations can affect whether or not these sources are currently required to have an air quality permit. Owners and operators of stationary emergency engines that are not required to have an air quality permit need not participate in the Permit-by-Rule Transition Program.

Stationary Emergency Engines

Current state rules exempt natural gas, gasoline, and diesel fuel fired engines used exclusively for emergency replacement or standby service from the requirement to obtain a construction or operating permit. Tenn. Comp. R. & Regs. 1200-03-09-.04(4)(b), 1200-03-09-.04(5)(f) (Tennessee's list of Title V "insignificant activities"). However, 1200-03-09-.04(5)(f) specifically states that "No emissions unit or activity subject to a federally enforceable applicable requirement (other than generally applicable requirements of the state implementation plan) shall qualify as an insignificant emissions unit or activity." Many stationary emergency and standby engines are subject to the federal New Source Performance Standards (NSPS) for Stationary Compression Ignition Internal Combustion Engines (40 CFR 60 Subpart IIII), the NSPS for Stationary Spark Ignition Internal Combustion Engines (40 CFR 60 Subpart JJJJ), and/or the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Reciprocating Internal Combustion Engines (40 CFR 63 Subpart ZZZZ). **Stationary residential, commercial, and institutional emergency engines that were manufactured prior to June 12, 2006, that are located at an area source of HAP emissions are exempt from the requirements of 40 CFR 63 Subpart ZZZZ. However, engines manufactured after this date, including residential, commercial, and institutional emergency engines, are likely to be subject to one of the NSPS standards. Thus, for any stationary emergency engine subject to one of these NSPS or NESHAP rules, the exemption from permitting is lost.**

There are currently 498 stationary reciprocating internal combustion engines (RICE) permitted by TDEC, the majority of which are emergency engines. In 2002, EPA estimated that there were about 10,000 RICE existed in the U.S. with about 4100 new engines built each year. Assuming that the number of RICE in Tennessee is proportional to population, an estimated 1400 RICE are located in the state with about 100 added per year. If Tennessee were to permit every new engine installed, this would amount to about a quarter of our construction permit load. Since stationary emergency engines are installed at any facility that may need backup power in the case of power outage, these sources could be located at any type of facility including industries, utilities, institutions, commercial operations, office buildings, and residential buildings, many of which have otherwise never been subject to air quality permitting. Currently, stationary emergency engines are identified and permitted as Division staff come across them during our normal course of business. Because of the large number of engines and the great diversity of facilities that may install them, stationary emergency engines are difficult to locate and the time it would take to truly capture this universe of sources through traditional permitting and enforcement, in order to ensure compliance statewide, would be difficult and very resource intensive.

The only regulatory requirements for emergency stationary reciprocating internal combustion engines (RICE) are to operate and maintain the engine according to manufacturer's instructions and to limit non-emergency operations (e.g., for testing and maintenance) to 100 hours per year. In contrast, traditional construction permits include emissions limits, opacity standards, operational restrictions, control device monitoring, maintenance records, malfunction logs, recordkeeping, startup notification, and the requirement to apply for and obtain an operating permit. Because of this difference in regulatory requirements, it is in TDEC's and the state's best interest to initiate a "Permit-by-Rule Transition Program" for sources that have failed to receive a permit for this category of sources and apply resources

instead toward the development and implementation of a permit-by-rule process for such sources. Furthermore, the Division is in the process of revising the provision in 1200-03-09-04(5)(f) that prohibits sources subject to a federally enforceable applicable requirement from qualification as an insignificant emissions unit or activity as long as those requirements are included in Tennessee's rules. Thus, once the change to this rule is effective and the federal RICE requirements are added to Tennessee's Air Quality rules, stationary emergency engines that meet the emissions threshold for an insignificant activity will be exempt from permitting.

Gasoline Dispensing Facilities (GDFs)

Many GDFs are subject to the requirements of Rule 1200-03-18-.24, Gasoline Dispensing Facilities – Stage I and Stage II Vapor Recovery. The Tennessee Air Pollution Control Board has recently promulgated rules that incorporate the requirements of 40 CFR 63 Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities. Subpart CCCCCC applies to all GDFs located at area sources. Paragraph (4) of Rule 1200-03-09-.04 states that the permit exemptions listed within that paragraph do not apply if an air contaminant source is subject to a requirement contained in Rule 1200-03-18-.24, among others. Therefore, persons operating GDFs are required to submit applications for and receive air quality construction and/or operating permits.

There are currently 1439 gasoline dispensing facilities permitted by APC. According to information received from the Tennessee Fuel & Convenience Store Association, there are 4339 gas stations in Tennessee. There are currently 3997 active operating permits issued by APC for all source categories. If TDEC were to find and permit all GDFs within our jurisdiction, it could almost double the number of permits issued by APC.

Federal air quality requirements for GDFs include work practice standards to minimize spills and evaporation, the installation of submerged fill pipes, and the installation and operation of Stage I vapor control systems (to prevent evaporative losses during fuel storage tank filling). GDFs in certain Middle Tennessee counties are also currently subject to Stage II vapor controls (to prevent evaporative losses during the filling of vehicles) but are required to remove them by July, 2019. Some of these emission controls are accomplished during construction of the filling station (e.g., proper Stage I connections and submerged fill pipes) and some of them are the responsibility of gasoline truck drivers (e.g., properly connecting Stage I hoses during filling). Also, compliance with these rules is usually managed by centralized office locations, not by staff at the individual stations. Thus, traditional permitting methods used for traditional industrial facilities are not as effective for GDFs. For this reason, a Permit-by-Rule Transition Program for facilities that have failed to receive a permit for this category of sources would allow APC to better focus resources on the development and implementation of process for covering GDFs using the permit-by-rule process.

Permits-by-Rule

Within the coming weeks, APC will propose that the Air Pollution Control Board promulgate rules that will allow persons operating certain categories of sources, to submit a Notice of Intent and obtain a Notice

of Authorization to construct, modify, or operate under a "Permit-by-Rule" in lieu of an air quality permit to construct or operate. Permit-by-Rule provides a streamlined method of permitting categories that contain a large number of similar sources subject to similar or identical regulatory requirements. GDFs are specifically listed as an eligible source category in the soon-to-be-proposed Permit-by-Rule. Revisions to incorporate the internal combustion engine federal standards into Tennessee's air quality rules and add stationary emergency engines as an eligible Permit-by-Rule source category are under way. Under Permit-by-Rule, all of the regulatory requirements are specified in the rules themselves. The rules may be supplemented with additional guidance and outreach materials to assist sources in complying with the rules. In the case of stationary emergency engines and GDFs, TDEC's Small Business Environmental Assistance Program has materials available to assist owners and operators of stationary emergency engines and GDFs to comply with the regulatory requirements.

Permit-by-Rule Transition Program and Procedures

Currently, APC is expending a significant amount of resources permitting stationary emergency engines and GDFs and initiating enforcement actions¹ for persons who construct or operate stationary emergency engines and GDFs without obtaining an air quality permit. However, given the difficulty in identifying where all these sources may be, it is likely we may only be reaching a small amount of these sources with our current efforts, despite the level of resources we are expending. Because APC's desired approach for permitting stationary engines and GDFs is through Permit-by-Rule and the work to accomplish this is already underway, I am exercising my enforcement discretion and initiating a Permit-by-Rule Transition Program for persons who (1) construct or operate a stationary emergency engine or GDF without obtaining an air quality construction and/or operating permit; and (2) meet certain qualification requirements. This transition program will remain in place until APC has obtained the authority and developed processes to either cover the specific sources noted above under Permit-by-Rule or (for stationary emergency engines that qualify as insignificant activities) exempt them from permitting altogether. The criteria for a source to qualify for this transition program are as follows:

1. The owner/operator must submit a notification to APC with the location of the GDF and/or stationary engine(s), name and contact information (including email) of the responsible person and authorized representative of the stationary engine or GDF, location of the stationary emergency engine or GDF, and number of stationary emergency engines;
2. A commitment from the responsible official to comply with the applicable regulatory requirements for the stationary emergency engine or GDF;
3. A commitment to provide an update of any information provided in #1 within a timely manner;
4. A commitment to submit a Permit-by-Rule Notice of Intent within 60-days the effective date eligibility for a source category to be covered under a Permit-by-Rule (unless notified by APC that the stationary emergency engine is exempt from permitting); and
5. The stationary emergency engine or GDF cannot be located at a major source subject to Title V or at a facility which has applied for or obtained a Conditional Major permit.

¹ The enforcement action for stationary emergency engines and GDFs that construct and/or operate without an air quality permit is often a Notice of Violation with a determination that no further action will be taken.

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It is important to note that given the qualification criteria to be eligible for the transition program, it is likely that the program will assist APC in better identifying this universe of sources in a shorter period of time than we could otherwise do on an enforcement by enforcement basis. I believe this will allow us to bring more of these sources into compliance through the Permit-by-Rule structure and will also allow the sources to work with our Small Business Environmental Assistance Program if needed to understand the requirements and to ensure compliance.

APC has developed a form with which persons that own or operate stationary emergency engines or GDFs may apply for coverage under this transition program. APC is currently working with TDEC's Small Business Environmental Assistance Program to provide outreach materials and to assist owners and operators of stationary emergency engines and GDFs that may be eligible to be covered under the transition program. Once this material becomes available, Environmental Field Offices, Permitting Programs, and any other staff aware of unpermitted stationary emergency engines and GDFs should provide this material to the owners and operators of those sources.

The Permit-by-Rule Transition Program only covers the requirement to have a permit. Sources that qualify for the transition program must still operate the source according to the requirements of the rules that apply to the source. The forms and documents developed clearly articulate that fact as well as the fact that inspection and enforcement for violations other than having a valid permit may still occur.

Should you have any further questions regarding this transition program, please contact Jimmy Johnston at 615-253-7319 or james.johnston@tn.gov.