



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912**

November 14, 2018

Karen Slattery  
Office of Air Resources  
Department of Environmental Management  
235 Promenade St  
Providence, RI 02908

Dear Ms. Slattery:

Thank you for the opportunity to review proposed revisions for Air Pollution Control Regulation, Part 43 - General Permits for Smaller-Scale Electric Generation Facilities (APCR 43). We understand that you are working to update the Rhode Island APCR 9, Air Pollution Control Permits and we suggest you submit the revised APCR 43 as a revision to your State Implementation Plan (SIP) alongside your future SIP revision to APCR 9. Please find EPA's comments on the proposed APCR 43 in the enclosure.

If you have any questions about the enclosed comments, please contact Susan Lancey at 617-918-1656.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leiran Biton".

Leiran Biton, Acting Manager  
Air Permits, Toxics and Indoor Programs Unit

Enclosure

## ENCLOSURE

### **EPA Comments on Rhode Island Air Pollution Control Regulation 43 for General Permits for Smaller-Scale Electric Generation Facilities**

1. Section 43.1.1 of the proposed Air Pollution Control Regulation (APCR) 43 states: “The purpose of this regulation is to allow certain emergency generators and distributed generators the option to apply for a general permit instead of a minor source permit under Part 9 of this Subchapter (Air Pollution Control Permits).” The applicability section 43.6.1, however, states that the regulation applies to any generator with a heat input capacity of 350,000 Btus or more per hour, or 50 HP or larger, unless it is subject to major source permitting requirements in APCR 9. We suggest that Rhode Island reconcile the language in sections 43.1.1 and 43.6.1 to clarify whether APCR 43 is intended to apply only to new and modified generators, or whether it is also intended to apply to existing generators.
2. A state’s minor new source review (NSR) permit program is required by Section 110(a)(2)(C) of the Clean Air Act (CAA), and the state’s program must meet the requirements set forth for such a program in 40 CFR 51.160-51.164 to be incorporated into the state implementation plan (SIP). We request that if Rhode Island submits this rule for approval into the SIP, Rhode Island submit a demonstration that details how APCR 43 meets the requirements of 40 CFR 51.160-164. For example, Rhode Island could state that “The public availability of information” required by 40 CFR 51.161 is met by the public comment period required by the adoption of APCR 43.
3. Under section 110(l) of the CAA, EPA cannot approve a revision to a SIP if “the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.” For example, EPA could not approve a state regulation into the SIP if that regulation is less stringent than a New Source Performance Standard (NSPS). The EPA has found several areas where APCR 43 is less stringent than 40 CFR Part 60, Subparts IIII and JJJJ. Once Rhode Island revises APCR 43 to be at least as stringent as 40 CFR Part 60, Subparts IIII and JJJJ, the state could then demonstrate a future SIP revision that includes APCR 43 would meet section 110(l).
4. Section 43.8.1 for emergency generators incorporates the standards from 40 CFR Part 89 by reference and in a table format. In some cases, the emission control level explicitly stated in APCR 43 results in emission standards less stringent than the federal rules in 40 CFR Part 89 and 40 CFR Part 60 Subpart IIII. For example, 43.8.1(C)(1)(c) requires emergency engines installed on or after May 15, 2007 to meet Tier 2 emission standards, but Part 89 Table 1 and Part 60 Subpart IIII require model year 2006 and later emergency engines to meet Tier 3 emission standards. The standards written into APCR 43 should be corrected to match the standards from Part 89 (which the state regulation states is incorporated by reference into APCR 43), including a reference to the model year of the engine as specified in Part 89.



5. The federal NSPS codified at Part 60 Subpart IIII and Subpart JJJJ include, in some instances, a more stringent emission limit for emergency engines than the emission limitation contained in 40 CFR Part 89. For example, see PM emission limits contained in 40 CFR 60.4202(e), which references 40 CFR Part 94.8 Table A.1, and CO emission limits contained in 40 CFR 60.4233(b)-(c), which reference 40 CFR 60.4231(b)-(c) and 40 CFR Part 1048. Rhode Island should apply the more stringent standards from 40 CFR Part 60, Subparts IIII and JJJJ to emergency engines in Section 43.8.1.
6. Under Section 43.8.3, emission limits do not apply to dual-fuel fired engines when firing liquid fuel for up to 30 days. This section should be clarified to state that dual-fuel fired engines must comply with any applicable emission limits from 40 CFR Part 60, Subparts IIII and JJJJ when firing liquid fuel.
7. Section 43.9.1 allows the owner or operator of a generating unit to certify that its engine meets the emission standard through a certification by the California Air Resources Board (CARB) or the generator supplier. EPA certifies engines under 40 CFR Part 89, and 40 CFR 60, Subparts IIII and JJJJ. It appears 43.9.1(C) is intended to allow for engine certifications by EPA. We recommend this section be clarified to state that engines certified “by EPA” shall be deemed to be certified for use as an emergency generator. In addition, if Rhode Island adds a reference in Section 43.8.1 to 40 CFR Part 60, Subparts IIII and JJJJ, Rhode Island should revise Section 43.9.1(C) to refer to both EPA non-road and stationary emissions standards.
8. Section 43.9.2 and Section 43.9.1(A)(2) allow for the use of other test methods approved by Office of Air Resources (OAR). These methods will also require EPA approval; therefore, Rhode Island should revise these paragraphs to require approval by OAR “and EPA.”
9. Section 43.2 “Application” is problematic for EPA to approve into the SIP as federal law because it states that “this regulation shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.” While this provision may be appropriate as a matter of state law, this provision provides Rhode Island with broad discretion, akin to a Director’s discretion provision, which is problematic to approve into the SIP. For example, EPA would be approving language that is not sufficiently defined in a way that EPA or the public could know what the “purposes of state law, goals and policies” are for the individual regulation in question. Therefore, if Rhode Island submits APCR 43 to EPA for approval as a SIP revision, the “Application” section should be omitted.
10. Section 43.10 “Credit for Concurrent Emissions Reductions” allows certain emissions credits to be subtracted from actual emission rates for compliance purposes. Although emission trading programs are allowed under section 110 of the CAA (see EPA guidance “Improving Air Quality with Economic Incentive Programs,” <https://www.epa.gov/sites/production/files/2015-07/documents/eipfin.pdf>), emission reduction credits cannot be used to comply with 40 CFR Subparts IIII and JJJJ. To ensure

compliance with the NSPS, we recommend Section 43.10 be revised to specify emission rates reduced by emission credits may not be less stringent than the emission limitations required by Subparts IIII and JJJJ.