DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

The Acting Director of the Department of Energy and Environment ("DOEE"), pursuant to the authority set forth in Sections 5 and 6 of the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985 (D.C. Law 5-165; D.C. Official Code §§ 8-101.05 and 8-101.06); Section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07(4)); Mayor's Order 98-44, dated April 10, 1998; and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the adoption of the following amendments to Chapter 6 (Air Quality – Particulates) of Title 20 (Environment) of the District of Columbia Municipal Regulations ("DCMR"). These rules were adopted as final on August 3, 2023, and will be effective upon of publication of this notice in the District of Columbia Register.

Background

This rulemaking amends 20 DCMR § 606 (Visible Emissions) to:

- clarify how DOEE regulates emission units measured at facilities using a continuous opacity monitoring system ("COMS");
- specify opacity limits for startup, cleaning, adjustment of combustion controls, or regeneration of emission control equipment;
- remove affirmative defense provisions;
- clarify the requirements of visible emissions limits for nonroad engines, requiring maintenance of logs; and
- improve the clarity of the regulations.

The Acting Director of DOEE is amending these regulations in response to the United States Environmental Protection Agency's ("EPA") final action, *Findings of Failure to Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction* ("Finding of Failure to Submit," "FFS") (January 12, 2022, 87 Fed. Reg. 1680). This EPA final action became effective on February 11, 2022, and gave the District 18 months from that date to submit an amendment to the District's State Implementation Plan ("SIP") or face sanctions under Section 109 of the Clean Air Act ("CAA").

EPA issued the FFS for the District because the District had not submitted an amendment to the District's SIP in response to the *Startup, Shutdown, and Malfunction SIP Call* ("SSM SIP Call").[1] The SSM SIP Call implements a settlement agreement executed November 30, 2011, to address a lawsuit filed by Sierra Club and WildEarth Guardians in *Sierra Club et al. v. Jackson*, No. 3:10-cv-04060-CRB (N.D. Cal.). The SSM SIP Call also provided updates to EPA's "cumulative guidance" on "interpretation of CAA requirements with respect to treatment of excess emissions

[1] State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 80 Fed. Reg 33839 (June 12, 2015).

during periods of startup, shutdown, and malfunction at a source" ("SSM Policy"). 80 Fed. Reg. 33842.

DOEE will submit these final regulations to EPA as an amendment to the District's SIP following their publication.

Discussion of Public Comments

A Notice of Proposed Rulemaking was published in the *District of Columbia Register* for a 30-day public notice and comment period on May 12, 2023, at 70 DCR 006912. The public comment period ended on June 12, 2023, and DOEE virtually held a public hearing on June 12, 2023. In response to the Notice of Proposed Rulemaking, DOEE received two comment letters—one from the Environmental Protection Agency ("EPA") and one from the District of Columbia Water and Sewer Authority ("DC Water"). No comments were received at the public hearing. DOEE notes that no petitioners in the legal case *Sierra Club et al. v. Jackson* submitted comments.

A summary of the comments received on the proposed rulemaking and DOEE's response to those comments are set out below. Certain comments received from the EPA are related to a prior rulemaking and the District's SIP.

Quantitative and Qualitative Regulation of Particulate Matter and Visible Emissions
One commenter (EPA) expressed concern for DOEE's statement in the preamble to the proposed rulemaking that there is not a correlation between particulate matter ("PM") and visible emissions. The commenter also requested additional explanation as to whether the Alternative Emission Limits ("AELs") would result in more particulate matter ("PM") or other emissions, or constitute backsliding under any National Ambient Air Quality Standards ("NAAQS"), specifically those regulating particulate matter ("PM").

The District regulates particulate emissions both quantitatively and qualitatively. The AELs will not result in more particulate matter emissions or constitute backsliding under any NAAQS because the District has regulations that set quantitative limits for particulate emissions in 20 DCMR § 600 while the qualitative regulations are the visible emission regulations being amended in this rulemaking. The Section 600 regulations set limits on particulate emissions that are applicable in all cases, with no exemptions for startup, shutdown, maintenance, or other operations. In addition, Section 600.1 directly relates to the level of particulates that impact public health, and therefore, the District's particulate emission regulations as a whole do not pose any risk of backsliding. Therefore, the District believes the emission limitations on particulate emissions in Section 600 meet the Clean Act definition of an emissions limitation, which is:

> The terms "emission limitation" and "emission standard" mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter.

Clean Air Act § 302 (k).

The District's visible emissions regulation is a qualitative regulation that does not preempt the quantitative emission limits found in 20 DCMR § 600. The District is updating its qualitative regulations on visible emissions in this final regulation to directly respond to the SSM SIP Call. Although opacity may be used as a surrogate for evaluating PM emissions, opacity only provides "**qualitative** information on the operation and maintenance of particulate control equipment" [emphasis added].[2] DOEE relies on EPA's guidance to determine whether emissions from a source meet appropriate levels using EPA's opacity tests. However, the evidence from EPA's work on opacity shows that opacity cannot be solely relied on to evaluate particulate matter emissions.

Further supporting EPA's stance that opacity is not a quantitative indication of particulate matter emissions, Penn State's "Visible Emissions Training", as updated in October 2020, states "[t]he naked eye can see individual air pollution particles down to about ten (10) µm [micrometers]."[3] The NAAQS program regulates particulate matter that is **less than** ten (10) µm, but does not regulate particulate matter above 10 µm. 40 C.F.R 50.6(c). The District incidentally does regulate particulate matter emissions based on visible emissions standards because, under NAAQS, the District must regulate particulate matter emissions at a level below 10 µm, which the visible emissions standards will not detect.

DOEE also reviewed the rules of other states that were subject to the SSM SIP call. For example, Georgia had both quantitative emission limits on particulate emissions and qualitative opacity regulations. However, the opacity regulations in Georgia (Ga. Comp. R & Regs. 391-3-1 (d)(3)) were not included in the SSM SIP Call even though they are generally less stringent than the District's and have startup, shutdown, and malfunction provisions. It is clear that EPA's position is that quantitative emissions limits, not qualitative opacity regulations, should govern any determination regarding compliance with the startup/shutdown/malfunction provisions.

DOEE finds that qualitatively limiting visible emissions in response to the SSMP SIP Call has clear secondary benefits and potentially could lead to less particulate emissions. Therefore, DOEE proposed amending 20 DCMR § 606 to meet the intent of the SSM SIP Policy and is making only minor changes to the text in the final regulation.

Shutdowns for Maintenance and Repair

A commenter expressed concerns with the provision regulating shutdown for "maintenance or repair" in 20 DCMR § 107.3, which as of June 5, 2020, is found at 20 DCMR § 102.4. DOEE did not propose any amendments to Sections 102 or 107 in the Notice of Proposed Rulemaking. The commenter stated that allowing controls to shut down for "maintenance or repair" as provided in 20 DCMR § 102.4(c) could be interpreted more broadly than the language currently in the SIP of "periodic maintenance." However, DOEE notes that it included "repair" in the 2020 final rule to provide regulatory certainty, but it was not an expansion of the then-existing rule as DOEE had

[2] *Current Knowledge of Particulate Matter (Pm) Continuous Emission Monitoring*, September 8, 2000, https://www3.epa.gov/ttnemc01/cem/pmcemsknowfinalrep.pdf (last viewed: June 29, 2023)

[3] *Visible Emissions Training*, October 6, 2020, https://visible-emissions.outreach.psu.edu/wp-content/uploads/2020/10/Training-Manual_2020.final_.10.12.2020.pdf (Last viewed on: June 29, 2023)

historically interpreted maintenance to include repair for purposes of the shutdown provisions final rule.

EPA and Citizen Enforcement

A commenter expressed concern that the language in 20 DCMR § 102.4(d), "[t]he department may …permit the continued operation of the source… provided that…operation of the source will not result in the violation of any federally enforceable emissions limitation or requirement," could "be interpreted to preclude enforcement by EPA or citizens if a violation does occur." However, any determinations made by DOEE under Section 102.4(d) are based on the judgment of DOEE's inspector. The EPA or citizens may take enforcement action based on public facility records and are not precluded from taking action based on the DOEE inspector's judgment. Therefore, DOEE has not made any changes to the rules in response to this comment.

Zero Percent Opacity Limit and Variability Factor

A commenter expressed concerns that DOEE did not set a zero percent (0%) opacity limit for units placed into initial operations on or after January 1, 1977, with an installed Continuous Opacity Monitoring System ("COMS"). DOEE is clarifying in the final rulemaking at 20 DCMR § 606.1(a) that the five percent (5%) variability factor is five percent (5%) above or below zero percent (0%).

The same commenter also expressed concerns that "DOEE's public notice states that there is a 10% variability factor for COMS that is being replaced with a five percent (5%) variability factor in 606.1(a), but the notice does not identify where in the District's regulations this ten percent (10%) variability factor is found." The ten percent (10%) variability factor is found in the existing 20 DCMR § 606.3[4] and in this rulemaking DOEE establishes that units with COMS will no longer have to go through an application process, but will instead have to meet the five percent (5%) variability standard.

The commenter stated that it might not be necessary to introduce the five percent (5%) variability factor in 20 DCMR § 606.1(a)(1) into the District's SIP as part of the 2015 SSM SIP call if it was already a part of the District's SIP. This exception was not previously incorporated into the SIP. Therefore, DOEE finds it necessary to include this as part of the SIP amendment to avoid a general SIP deficiency, even if it is not necessary to address the SSM SIP Call. Therefore, DOEE will submit the variability factor as part of the SIP.

Clean Air Act Nonroad Mobile Source Preemption

Both commenters expressed concerns about preemption opacity standards under the CAA Section 209(e)(1). One of the commenters was concerned by DOEE adopting opacity standards for non-road engines. A commenter requested that the definition for non-road engines exclude small engines used for property maintenance, mobile cranes, fork trucks, utility vehicles, and equipment utilized for emergency dewatering.

As DOEE stated in its proposal "DOEE is not setting a new emissions standard but instead clarifying its use of a best available test to determine whether nonroad engines are emitting

[4] Specifically, the existing § 606.3 states: "As an exception to § 606.1, the owner or operator of a stationary source may obtain a permit pursuant to chapters 2 or 3 of this title allowing visible emissions not exceeding ten percent (10%) opacity if the owner or operator can demonstrate that the source meets the following criteria…"

particulate matter in amounts that exceed the federal emissions standards for the type of engine." While DOEE agrees that it cannot create its own emission standards for nonroad engines, DOEE can enforce existing federal opacity limits. EPA has specifically set opacity limits for Tier 1 and greater compression ignition engines under 40 C.F.R. § 1039.105, and Tier 0 and greater locomotives under 40 C.F.R. 1033.101 (c). To align the final rulemaking to the federal standards for opacity from nonroad engines, DOEE specifically outlines these standards in the final rulemaking under 20 DCMR § 606.1(b) and (c) and 20 DCMR § 606.6(d) and clarifies that it is strictly using its opacity rule to enforce specific federal standards. DOEE also is addressing the concerns expressed by a commenter concerning the regulation of "mobile cranes, fork trucks, utility vehicles, and equipment utilized for emergency dewatering." Since the finalized opacity changes are the implementation-specific federal regulations that were already present in our regulations, the changes in the final regulation do not place an additional burden on any compression ignition engines currently in use.

Alternative Emission Limit Thresholds

In 20 DCMR § 606.2, DOEE proposed several options for opacity standards that differed from the baseline of zero percent (0%) during certain activities (e.g., startup). The commenter stated that all of the proposed alternative emission limits (AELs) should be set to forty percent (40%) for the purpose of regulatory certainty. As part of the response to comment for the SSM SIP Call that this rulemaking is drafted in response to, EPA wrote:

> The EPA's SSM Policy enumerates several criteria for establishing alternative emission limits that the EPA believes would be consistent with CAA requirements, including that such alternate limits be narrow in scope and justified by infeasibility of controls during periods of startup and shutdown. The District's small universe of potential sources at the present time does not sufficiently limit the alternative limit to a narrow category of sources.

DOEE cannot meet the guidance set by EPA in the SSM Policy by setting identical AELs for all sources. Furthermore, the commenter provided no technical documentation supporting an AEL of forty percent (40%) for any of the types of sources.

Alternative Emission Limit Categories

Another commenter stated that source categories presented in 20 DCMR § 602.2 were not tailored narrowly enough, citing the need to tailor different AELs for units of differing sizes. However, no technical evidence was provided to support further tailoring the source categories, nor were any specific subcategories proposed by the commenter. Additionally, DOEE is setting the AEL limits at the strictest levels proposed. DOEE believes that further splitting of categories under Section 606.2 would not provide any additional benefits in terms of reduced visible emissions, but instead complicate enforcement and compliance. Thus, DOEE is not further tailoring the opacity levels for AELs in 20 DCMR § 606.2.

DOEE finds that the lower AELs proposed for each category were justified by examining other jurisdictions' rulemakings and because no technical evidence was provided by commenters refuting these AELs. Thus, DOEE is adopting the lowest of the options presented in the proposal for each of the source categories presented in the proposal. 20 DCMR § 606.2.

Alternative Emission Limit Time Period

A commenter stated that the proposal lacked justification for setting the time period for an AEL to two (2) minutes. Documentation for "Method 9" specifically states that the averaging time for emission limits should be six (6) minutes if a "SIP regulation does not clearly specify an averaging time." Method 9 is an EPA reference method for making visual determination of the opacity of emissions. 40 C.F.R pt. 60 app A-4. DOEE has reviewed the underlying statutory language in the Clean Air Act, the SSM SIP Call, the SSM SIP Call EPA response to comments document, and the SSM Policy and is unable to locate a legal requirement in statute, regulation, or guidance for the averaging time. Additionally, Georgia, Louisiana, and West Virginia, which were subject to the SIP Call and had opacity regulations that were not considered deficient, each had six (6) minute limits. While DOEE found that many states do rely on a six (6) minute limit, the DOEE's current regulations already have a two (2) minute limit. The commenter did not identify a specific problem with the current time limit in these regulations and EPA did not include a specific time limit in the SSM SIP Call. DOEE's proposed limit of two (2) minutes in 20 DCMR 606.2 is more stringent and more protective than a six (6) minute limit.

The commenter did not specifically cite that DOEE's time limit of two (2) minutes was too strict and did not recommend a new time limit. Increasing the limit to six (6) minutes could lead to backsliding, which is not allowed under EPA regulations. DOEE does not find the two (2) minute limit is either too strict or too lenient; therefore, DOEE has not changed the AEL in 20 DCMR 606.2.

Alternative Emission Limit Frequency

A commenter expressed concern that there was no limit proposed on the frequency of the use of AELs (i.e., the AEL can only be reached X times in a 24-hour period). DOEE believes it is not appropriate to set a specific limit on the frequency of the use of the AEL since the AEL is limited to defined purposes. For example, a stationary generator may need to start up multiple times during a period in response to a power outage or other emergency. Another example where AELs may be more frequent is during the adjustment of controls since the unit may need to start up and shut down more often as the emission controls are properly adjusted to reduce pollution levels in the long term. DOEE finds that it would be better for the long-term health of the residents if DOEE allows a unit to appropriately adjust its controls to achieve reduced oxides of nitrogen and particulate matter emissions despite short-term increases of visible emissions. DOEE expects that events requiring multiple startups of units or multiple adjustments of combustion controls in a short timeframe would occur seldomly. Finally, DOEE proposed removing the existing allowance for malfunctions as an acceptable AEL operation, which also limits the potential for a higher frequency of use of the AEL to occur without reason. No changes have been made in response to this comment in the final regulation.

Alternative Emission Limit Allowances for Exemptions for Cleaning, Soot Blowing, and Adjustment of Controls

The same commenter also expressed concern that "cleaning, soot blowing, and adjustment of controls" are considered normal operations and thus should be subject to the baseline opacity limit.

In EPA's SSM SIP Call, it stated:

> EPA agrees that SIP provisions should impose emission limitations that are reasonable and achievable by sources, so long as they are also consistent with the applicable legal requirements for that type of provision. The EPA acknowledges that in some cases, emission limitations may need to include alternative numerical limitations, technological controls or work practices during some modes of operation, such as startup and shutdown. As explained in detail in the February 2013 proposal and in this action, the EPA interprets the CAA to allow SIP provisions to include different numerical limitations or other control requirements as components of a continuously applicable emission limitation, so long as the SIP provision meets all other applicable requirements.

DOEE is specifically setting "different numerical limitations" as a "component[] of a continuously applicable emission limitation." SSM SIP Call, June 12, 2015. DOEE's strict zero percent (0%) limitation results in more operating conditions that require exemptions than other jurisdictions with higher limitations. In the proposed regulations, DOEE included an adjusted AEL to provide adequate time for "cleaning, soot blowing, and adjustment of controls" since these operations may be considered normal conditions if our opacity limit was set, hypothetically, to twenty percent (20%), but become impossible when normal operations must meet a zero percent (0%) limit. Not allowing exemptions would prevent operators from cleaning the equipment, soot blowing, and adjusting emission controls, and may lead to the production of more harmful oxide of nitrogen and particulate matter emissions that would not occur if operators were allowed to occasionally release very limited levels of visible emissions. Additionally, though soot blowing is included in the proposal, the District only has one source left capable of firing coal, and this source has not burned coal since 2019. Therefore, this operating mode will only be used when extenuating circumstances exist. No changes have been made in response to this comment in the final regulation.

In EPA's response to comment for the SSM SIP call, EPA uses the District's zero percent (0%) opacity standard as an example to explain that states can use "enforcement discretion for situations … when compliance is beyond [the] control of a source." DOEE believes it is unreasonable to set emission standards at a level that can only be complied with during normal operations through the exercise of regular and permanent enforcement discretion. Enforcement discretion only should be exercised when a circumstance arises that goes beyond the normal course of action, not as a course of action that is necessary for a rule to be achievable.

DOEE set specific limits for cleaning, soot blowing, and adjustment of controls in the proposal that are based on AELs in other states. DOEE is adopting the most stringent options that we presented, which set stricter requirements in all circumstances compared to the current District's SIP. As explained in our analysis, DOEE finds it is necessary to allow for increased but limited, opacity levels during cleaning, soot blowing, and adjustment of controls so sources can reasonably achieve the requirements in the rulemaking, which are what is reasonably achievable by sources. No changes have been made in response to this comment in the final regulation.

Alternative Emission Limits for Sources with High SO_2 Emissions

One commenter expressed that they did not find that DOEE adequately demonstrated that "equipment using fuels with the potential to produce SO_2, such as boilers burning fuel oil or coal"

followed the SSM Policy guidance for the second AEL criteria. DOEE's research found that the AELs that DOEE selected for fuel-burning equipment in the final rulemaking are more stringent than those in Georgia and West Virginia's regulations. EPA found those regulations acceptable under the SSM SIP Call. DOEE also sought additional technical information on the proposed AELs as part of the rulemaking process. The commenters provided no additional information or technical analysis as to why they believe additional controls are needed when burning fuel oil or coal. DOEE also notes that fuel oils #5 and #6 are currently banned in the District, and sulfur limits on fuel oils #2 and #4 are set at strict levels in 20 DCMR § 801 and in the District's current SIP. In addition, as previously mentioned, coal has not been used as a fuel source in the District since 2019.

Application of 20 DCMR § 606 on Equipment Currently in the Permitting Process

A commenter stated that 20 DCMR § 606.3 "should be modified to reflect equipment that is in the process of being permitted." The only alteration in the proposed text from the currently promulgated Section 606.3 involved the movement of the requirement that permits would be "pursuant to chapters 2 or 3 of this title" from the main paragraph in Section 606.3 to Section 606.3 (e). Any unit currently in the permitting process already had this option, and it is not an addition to Section 606. No change is necessary in the final rule to accommodate this request.

Requirements for Maintenance of Equipment

A commenter stated that DOEE "should not require that equipment be maintained in accordance with manufacturer's instructions or under alternate plans that must be approved by the District." In particular, the commenter stated they relied on a Computerized Maintenance Management System ("CMMS") to manage emissions from their equipment. They specifically expressed concerns about this burden in regard to managing nonroad equipment. It is unclear from the commenter why they are unable to provide an alternative plan to be approved by the District based on their use of the CMMS. Additionally, EPA's policy concerning AELs states:

> At all times, the facility must be operated in a manner consistent with good practice for minimizing emissions, and the source must have used best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limitation[.]

DOEE finds its proposal is a minimally burdensome approach to meeting the guidance for AELs and the commenter provided no alternative that would meet EPA's guidance. While use of a CMMS is not necessarily sufficient on its own, DOEE does find it reasonable to explore the approach of an "alternate written maintenance plan" with sources that may require a less formulaic approach, as allowed under 20 DCMR § 606.4(b)(2). Thus, DOEE makes no changes in the final rule in response to this comment.

Requirements for Training Operators

A commenter stated that licensed operators should meet the proposed training requirements in 20 DCMR § 606.4(c) and was specifically concerned as to whether operators would need to be proficient in "Method 9" to comply with Section 606.4(c). DOEE did not intend that operators would require such training in order to comply with this section, and thus finds that the wording in Section 606.4(c) needs clarification. The final rule now reads "Ensure that persons participating

in the maintenance and operation of equipment are adequately trained and supervised to *meet the requirements of 606.4 (a) and (b)*." 20 DCMR § 606.4(c) (emphasis added).

Requirements for Logbooks
A commenter stated that DOEE should revise its logbook requirements, specifically to "delete the proposed requirement for a logbook, and instead require logs to be "signed by the person recording the information or maintained in a verifiable electronic system whose information can be certified as to its accuracy."

The change proposed by the commenter does not adequately allow the opacity regulation to meet the EPA guidance found in the SSM SIP Call for "properly signed, contemporaneous operating logs," to document emission events that require the use of AELs. No changes have been made in response to this comment in the final regulation.

Requirements for Investigations of Malfunctions
A commenter requested that DOEE remove requirements to investigate malfunctions of regulated equipment.

This requirement is necessary to ensure that equipment is not producing excess emissions. While, as discussed earlier, opacity is not directly correlated with excess harmful particulate emissions, when a piece of equipment is producing an unexpected release of visible emissions, it is reasonable to assume that non-visible particulate emissions have increased due to malfunction. Additionally, visible emissions do impact the public's perception of the air quality. The documentation is necessary to show that the owner or operator has properly reviewed the cause of the malfunction and developed an appropriate course of action, if necessary, to repair or scrap the equipment in question. Further, since visible emissions from malfunctions are a violation under the final regulations, not investigating and resolving the issue can lead to additional or continuing violations. No changes have been made in response to this comment in the final regulation.

Concerns that Revisions are Not Necessary to Respond to the SSM SIP Call
A commenter raised questions concerning 20 DCMR § 606.3 and whether the change needs to be included in the District's SIP amendment.

DOEE agrees that the provisions of 20 DCMR § 606.3 are not necessary to respond to the SSM SIP Call. However, the provisions in Section 606.3 are being submitted to EPA as part of the District's SIP to eliminate SIP discrepancies between the existing version of the SIP and DOEE's current regulations. Thus, DOEE plans to include the changes in Section 606.3 in its SIP submission even if it is not necessary to address the SSM SIP Call.

Updates in Final Rulemaking

In the final rulemaking DOEE:

- Clarified the references to exemptions to 20 DCMR § 606 in the text by removing "these air quality regulations" from § 606.1 and replacing it with Subsections 606.3 and 606.6.
- Included language in 20 DCMR § 606.1 (a)(1) to specify that the variability factor of five percent (5%) applied to a baseline of zero percent (0%).

- Added paragraphs (b) and (c) to 20 DCMR § 606.1 to clarify that only emissions from nonroad compression ignition engines and locomotive engines are subject to § 606 and included federal citations to those standards.
- Selected the strictest proposed AEL for each category in 20 DCMR § 606.2.
- Removed the AEL for nonroad engines in 20 DCMR § 606.2 since it was not directly tied to a federal standard.
- Corrected a citation in 20 DCMR § 606.3 to read § 606.1(a)(2).
- Provided clarifying language in 20 DCMR § 606.4 (c) as to the for training for maintainers and operators of equipment.
- Clarified in 20 DCMR § 606.6 (d) that nonroad engines that do not have federal opacity limits are not regulated under 20 DCMR § 606.

Title 20 DCMR, ENVIRONMENT, Section 606, VISIBLE EMISSIONS is amended to read as follows:

606 VISIBLE EMISSIONS

606.1 Except as otherwise provided in Subsections 606.3 and 606.6, visible emissions from stationary sources and nonroad engines shall not:

(a) For stationary sources:

(1) Exceed a five percent (5%) variability factor, above or below zero percent (0%), from stationary equipment placed in initial operation on or after January 1, 1977, with an installed Continuous Opacity Monitoring System (COMS);

(2) Be emitted into the outdoor atmosphere from any stationary equipment placed in initial operation on or after January 1, 1977, without an installed COMS; and

(3) At any time exhibit opacity more than ten percent (10%) (unaveraged) from any stationary equipment placed in initial operation before January 1, 1977;

(b) For nonroad compression ignition engines Tier 1 and greater, exceed the opacity standards outlined in 40 C.F.R. § 1039.105; and

(c) For locomotive engines, exceed the opacity standards outlined in § 40 CFR 1033.101 (c) for the specific engine tier.

606.2 Discharges shall be permitted for two (2) minutes during any startup, cleaning, adjustment of combustion or operational controls, or regeneration of emission control equipment; provided, that such discharges shall not exceed the following opacities (unaveraged) for each of the following stationary sources:

(a) Fuel-burning equipment:

(1) When burning exclusively natural gas, twenty percent (20%); and

(2) When burning fuel oil or a combination of fuel oil and natural gas, twenty-seven percent (27%);

(3) In all other cases, including when burning coal, twenty-seven percent (27%);

(b) Combustion turbines, twenty percent (20%);

(c) Asphaltic concrete production equipment, twenty percent (20%);

(d) Stationary engines, twenty-seven percent (27%);

(e) Cooking equipment, twenty percent (20%); and

(f) All sources not specified, twenty-seven percent (27%).

606.3 As an exception to § 606.1(a)(2), the owner or operator of a stationary source may produce visible emissions not to exceed ten percent (10%) opacity if the owner or operator can demonstrate that the source meets the following criteria:

(a) The source meets all applicable particulate matter standards at the increased visible emissions limit;

(b) Visible emissions at the increased visible emissions limit are not an indication of improper operation of the equipment;

(c) The particulate emissions at the increased visible emissions limit will not create a violation of any National Ambient Air Quality Standard;

(d) The source cannot modify operations or install control equipment to meet a lower opacity standard without incurring unreasonable expense; and

(e) The source has had this limit approved in a permit pursuant to Chapter 2, and when applicable Chapter 3, of this title.

606.4 Owners and operators of stationary sources and regulated nonroad engines shall:

(a) Maintain and operate the equipment, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions, including during startup, shutdown, and malfunction;

(b) Maintain the equipment in accordance with one of the following:

(1) The manufacturer's emission-related written instructions; or

(2) Unless preempted by specific federal regulation, an alternate written maintenance plan approved in writing by the Department; and

(c) Ensure that persons participating in the maintenance and operation of equipment are adequately trained and supervised to meet the requirements of Section 606.4 (a) and (b).

606.5 Owners and operators of stationary sources and regulated nonroad engines shall:

(a) Maintain signed or electronically verified logs of the date, time, and duration of any equipment manual startup, manual shutdown, cleaning, combustion control adjustment, emission control regeneration, and malfunction;

(b) For any malfunction, investigate the cause of the malfunction and maintain records of the investigatory activities and conclusions of such investigation;

(c) Maintain signed or electronically verified logs of the date and description of any maintenance performed on any installed COMS; and

(d) Retain all records required pursuant to § 606.5(a) through (c) in accordance with § 500.8, unless a longer retention period is required pursuant to another applicable regulation.

606.6 The provisions of this section shall not apply to visible emissions:

(a) When the presence of uncombined water is the only reason for failure of a visible emission to meet the requirement;

(b) From interior fireplaces;

(c) When steam is used to blow oil from a burner as the last phase of shutting down the burner; and

(d) From nonroad engines not subject to 40 C.F.R. § 1039.105 or 40 C.F.R. § 40 CFR 1033.101 (c).