

TENTATIVE AGENDA  
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, SEPTEMBER 9, 2011  
HOUSE ROOM C  
GENERAL ASSEMBLY BUILDING  
9<sup>TH</sup> & BROAD STREETS  
RICHMOND, VIRGINIA

Convene – 9:00 a.m.

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<b>I.</b>	<b>Review and Approve Agenda</b>	
<b>II.</b>	<b>Minutes</b> (June 10, 2011)	A
<b>III.</b>	<b>Regulation Repeals</b>	
	Transportation Conformity (Rev. G11)	Graham B
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<b>IV.</b>	<b>Final Regulations - Exempt</b>	
	Greenhouse Gas Tailoring - Biomass Exemption (Rev. E11)	Sabasteanski E
<b>V.</b>	<b>Petition for Rulemaking</b>	
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<b>V.</b>	<b>High Priority Violators Report</b>	Nicol G
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ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

**PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration. For **REGULATORY ACTIONS** (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held. In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented at the public hearing or during the public comment period up to 3 minutes to exercise their rights to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

**POOLING MINUTES:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

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**Repeal of Regulation for Transportation Conformity (9VAC5 Chapter 150, Rev. G11)** - Request to Publish Proposal for Public Comment and Use the Fast-Track Process: The Regulation for Transportation Conformity (9VAC5-150) requires that transportation plans, programs, and projects conform to state air quality requirements and federal requirements established under § 176(c) of the federal Clean Air Act. The regulation establishes the criteria and procedures for ensuring that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

On March 26, 2007, the State Air Pollution Control Board adopted a new Regulation for Transportation Conformity (9VAC5-151) to meet the new federal requirements of 40 CFR Part 93. The new Chapter 151 was a replacement for Chapter 150 regulation and became effective on May 31, 2007. In order for the state regulations to be administratively correct, 9VAC5-150 must now be repealed.

The department is requesting approval of draft final regulation amendments that repeal 9VAC5 Chapter 150 because Chapter 151 meets all of the federal statutory and regulatory requirements for transportation conformity.

The department did not issue a notice of intended regulatory action nor conduct any associated public participation activities because we are requesting that the board adopt the amendments as final regulations provided they complete the fast-track rulemaking process as provided in the Code of Virginia. Under the provisions of § 2.2-4012.1 of the Administrative Process Act, agencies may use the fast-track rulemaking process for regulations that are expected to be noncontroversial. The reasons for using the fast-track rulemaking process may be found in the agency background document.

Under the fast-track process, the proposal will be subject to a 30-day public comment period. If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, or (ii) the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the Department will (i) file notice with the Registrar of Regulations for publication in the Virginia Register and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Otherwise, the regulation becomes effective 15 days after the end of the public comment period.

The department proposes to repeal 9VAC5 Chapter 150, Regulation for Transportation Conformity in its entirety. These amendments do not affect 9VAC5 Chapter 151, Regulation for Transportation Conformity.

The department intends to recommend that the board authorize the department to:

1. Promulgate the attached proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

**Repeal of Exclusionary General Permit for Federal Operating Permit Program (9VAC5 Chapter 500, Rev. H11)** - Request to Publish Proposal for Public Comment and Use the Fast-Track Process: Section 502(a) of the federal Clean Air Act requires major sources to apply for, obtain, and comply with a permit issued under a federally approved permit program that meets the requirements of Title V of the Act. In compliance with § 502(d), Virginia adopted regulations that implemented federal requirements for such federal operating (Title V) permit programs (9VAC5 Chapter 80, Articles 1, 2, 3 and 4). A state operating permit program (9VAC5 Chapter 80, Article 5, State Operating Permits) was also implemented to establish federally enforceable permit limits on a source's potential to emit emissions of any regulated pollutant below the Title V permit program applicability threshold.

Because time and resource constraints prevented the timely issuance of sufficient Article 5 state operating permits to meet the demand, the U.S. Environmental Protection Agency (EPA) issued a transition policy that allowed states to adopt general permit regulations to allow sources with actual emissions below the federal thresholds to be temporarily deferred from applicability under the state Title V permit programs. On April 24, 1997, the board adopted the Exclusionary General Permit program (9VAC5 Chapter 500) to implement that EPA transition policy.

The expiration date for the EPA transition policy was extended by subsequent EPA memos until December 31, 2000. With the expiration of the EPA transition policy on December 31, 2000, sources with general permits based upon actual emissions (such as those still deferred under 9VAC5 Chapter 500) were subject to the requirement to apply for and obtain permits under the federal Title V permit program. As of that date, 9VAC5 Chapter 500 conflicted with federal and state regulatory requirements. This action to repeal Chapter 500 in its entirety resolves that conflict.

The department is requesting approval of draft final regulation amendments to repeal Chapter 500, Exclusionary General Permit for Federal Operating Permit Program.

Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

The department did not issue a notice of intended regulatory action nor conduct any associated public participation activities because we are requesting that the board adopt the amendments as final regulations provided they complete the fast-track rulemaking process as provided in the Code of Virginia. Under the provisions of § 2.2-4012.1 of the Administrative Process Act, agencies may use the fast-track rulemaking process for regulations that are expected to be noncontroversial. The reasons for using the fast-track rulemaking process may be found in the agency background document.

Under the fast-track process, the proposal will be subject to a 30-day public comment period. If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, or (ii) the Department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the Department will (i) file notice with the Registrar of Regulations for publication in the Virginia Register and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Otherwise, the regulation becomes effective 15 days after the end of the public comment period.

The department proposes to repeal 9VAC5 Chapter 500, Exclusionary General Permit for Federal Operating Permit Program in its entirety.

The department intends to recommend that the board authorize the department to:

1. Promulgate the attached proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

**Repeal of Variance for Open Burning (9VAC5 Chapter 240, Rev. I11)** - Request to Publish Proposal for Public Comment: Section 10.1-1307 of the Code of Virginia provides that the board may grant local variances from regulations of the board if it finds that local conditions warrant. On March 26, 2007 the board issued a variance (9VAC5 Chapter 240) to provide relief to Gloucester County residents from the regulatory seasonal restrictions on open burning. That variance expired on December 31, 2008. The expired variance still exists as regulation. In order for the state regulations to be administratively correct, 9VAC5-240 must be repealed.

The department is requesting approval of this proposal for public comment that meets federal and state statutory and regulatory requirements. Under §2.2-4016, a regulation may be repealed after its effective date only in accordance with the provisions of the Administrative Process Act that governed its adoption. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

9VAC5 Chapter 240, Variance for Open Burning is repealed in its entirety: the applicability, definitions, provisions for permissible open burning, compliance provisions, and applicability provisions for future regulations. The repeal of Chapter 240 does not affect the provisions of the Regulation for Open Burning (9VAC5 Chapter 130), which are now applicable in Gloucester County.

The department intends to recommend that the board authorize the department to promulgate the proposed repeal for public comment.

**Permits for Stationary Sources of Pollutants Subject To Regulation, Greenhouse Gas Tailoring (9VAC5 Chapter 85, Rev. E11)** - Request for Board Action on Exempt Final Regulation: On July 20, 2011 (76 FR 43490), the U.S. Environmental Protection Agency (EPA) promulgated final amendments to its regulations for permitting of greenhouse gases (GHGs). The purpose of the amendments is to defer, for a 3-year period, the application of the Prevention of Significant Deterioration (PSD) and federal operating (Title V) permitting requirements to carbon dioxide (CO<sub>2</sub>) emissions from bioenergy and other biogenic stationary sources in order for EPA to conduct a detailed examination of the science associated with biogenic CO<sub>2</sub>. The amendments affect the PSD NSR regulations in 40 CFR 51.166 by revising the definition of "subject to regulation." Because Virginia has the authority to directly implement federal PSD regulations as long as its rules are at least as protective as the federal, the corresponding Virginia regulation must be revised accordingly when a final federal rule is promulgated. The amendments also affect the federal operating permit (Title V) regulations in 40 CFR Part 70 by revising the definition of "subject to regulation." Virginia's federal operating permit regulations are federally approved, and must be revised accordingly when a final federal rule is promulgated.

The department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

Because the state regulations are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations, the state regulations are exempt from the standard regulatory adoption process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the standard regulatory adoption process and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. Further, in adopting the regulation amendments under the provisions of § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Notice that the regulation would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

Below is a brief summary of the substantive provisions of the proposal.

1. The federal operating (Title V) definition of "subject to regulation" is revised to exempt biomass from evaluation for a 3-year period. [9VAC5-85-30]
2. The PSD definition of "subject to regulation" is revised to exempt biomass from evaluation for a 3-year period. [9VAC5-85-503]

The department intends to recommend that the board adopt the proposal, with an effective date consistent with the Administrative Process Act and affirm that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

**Petition for Rulemaking, Carbon Dioxide Emissions- Public Participation Report and Request for Board Action:** On May 4, 2011, the department received a petition from Emma Serrels, and Alec Loorz and Victoria Loorz (Kids vs. Global Warming) to initiate a rulemaking concerning carbon dioxide (CO<sub>2</sub>) emissions. The petitioners have requested that the board adopt a new regulation that will: (i) ensure that CO<sub>2</sub> emissions from fossil fuels peak in 2012; (ii) adopt a CO<sub>2</sub> emissions reduction plan that, consistent with the best available science, reduces statewide fossil fuel CO<sub>2</sub> emissions by at least 6% annually until at least 2050, and expand Virginia's capacity for carbon sequestration; (iii) establish a statewide greenhouse gas (GHG) emissions accounting, verification and inventory and issue annual progress reports so that the public has access to accurate data regarding the effectiveness of Virginia's efforts to reduce fossil fuel carbon dioxide emissions; and (iv) adopt any policies or regulations to implement the GHG emissions reduction plan.

Today, the department is recommending that the board deny the petitioner's request for the reasons set forth below.

**Public Participation Activities:** To solicit comment from the public on the petition, the department issued a notice that provided for receiving written comment during a comment period. The summary and analysis of the public comments are attached.

**Nature Of Request:** The petitioners are requesting that the board adopt a new regulation that will: (i) ensure that CO<sub>2</sub> emissions from fossil fuels peak in 2012; (ii) adopt a CO<sub>2</sub> emissions reduction plan that, consistent with the best available science, reduces statewide fossil fuel CO<sub>2</sub> emissions by at least 6% annually until at least 2050, and expands Virginia's capacity for carbon sequestration; (iii) establish a statewide GHG emissions accounting, verification and inventory and issue annual progress reports so that the public has access to accurate data regarding the effectiveness of Virginia's efforts to reduce fossil fuel carbon dioxide emissions; and (iv) adopt any policies or regulations to implement the GHG emissions reduction plan.

**Reasons For Recommendation:** Below are the reasons for the department's recommendation.

1. Climate change and reduction of CO<sub>2</sub>/GHG emissions are global issues that would be most effectively addressed on a global and national level. As indicated in the attached response to board member questions, EPA has begun this process, and Virginia is participating in these federal programs in concert with most other states.
2. As discussed in the attached response to board member questions, it is reasonable to anticipate that a state-specific program for controlling CO<sub>2</sub>/GHG in the manner recommended by the petitioners would have very little, if any, beneficial impact on the Commonwealth's environment, while imposing a substantial disproportionate burden on the Commonwealth's economy, including requiring a significant expenditure of scarce department resources.
3. Given the potential significant impacts of such a program, the elected representatives of the Virginia General Assembly are those in the best position to determine what, if any, measures related to climate change the Commonwealth should adopt in addition to the federal programs.

The department intends to recommend that the board deny the petitioner's request for the reasons set forth above.

## **RESPONSE TO GENERAL BOARD MEMBER QUESTIONS**

In addition to the following discussions, we direct the reader to the formal response to public comment, which discusses many of the issues summarized below in greater detail.

1. Are there any relevant federal requirements?

Current and upcoming federal measures intended to monitor and control carbon dioxide (CO<sub>2</sub>)/greenhouse gas (GHG) emissions include the following:

Light-Duty Vehicle ("Tailpipe") Rule (75 FR 25324, May 7, 2010).	Establishes national standards for vehicles to reduce CO <sub>2</sub> /GHG emissions and improve fuel economy.	National rule, no board action required.
Medium- and Heavy-Duty Vehicle Rule (proposed 75 FR 74152, November 30, 2010).	Establishes national standards for vehicles to reduce CO <sub>2</sub> /GHG emissions and improve fuel economy.	National rule, no board action required.
Prevention of significant deterioration (PSD) permitting rules (by operation of the Tailpipe Rule and governed by the Tailoring Rule)	Requires sources seeking to construct or modify to obtain a permit limiting pollution in PSD areas.	State rule in place.
Tailoring Rule (75 FR 31514, June 3, 2010; revised July 20, 2011 (76 FR 43490)).	Clarifies applicability of permitting requirements for CO <sub>2</sub> /GHG emissions.	State rule adopted September 10, 2010; effective January 2, 2011. Biomass provisions to be adopted September 9, 2011.
Mandatory Reporting Rule (40 CFR Part 98; 74 FR 56374, October 30, 2009)	Establishes CO <sub>2</sub> /GHG reporting requirements for certain facilities that directly emit CO <sub>2</sub> /GHG as well as for	National rule, no board action required.

	certain fossil fuel suppliers and industrial CO <sub>2</sub> /GHG suppliers.	
NSPSs for fuel-fired power plants and petroleum refineries (proposed agreements December 23, 2010).	Establish standards for control of CO <sub>2</sub> /GHG emissions from the two largest source categories of CO <sub>2</sub> /GHGs.	Board will need to adopt final federal rules in order to implement.
NSPSs and MACTs for oil and natural gas (proposed July 28, 2011).	Establish standards for control of VOC and other emissions with GHG co-benefit from methane reductions.	Board will need to adopt final federal rules in order to implement.
54.5 mpg Fuel Efficiency Standard (rulemaking underway).	Establishes national standards for vehicles to reduce CO <sub>2</sub> /GHG emissions and improve fuel economy.	National rule, no board action required.

2. What would the impact be on current permittees and programs and what would the affect be on the regulated community?

It is anticipated that the impact on permittees, programs, and the regulated community would be significant. In the absence of a specific de minimis level, such rules would potentially affect thousands of combustion units--including, theoretically, apartment buildings and homes fueled with natural gas or oil furnaces. Immediate impacts to the sources themselves aside, the impacts on department permitting and compliance staff would be overwhelming, as thousands of new, very small sources would have to be permitted and inspected.

3. How would it be enforced?

As stated in item 2, thousands of new, very small sources would have to be permitted and inspected. The department does not have the resources available to implement such an effort.

4. Is a state-by-state approach appropriate?

A comprehensive and harmonized national approach is far more appropriate than a piecemeal state approach. Control of CO<sub>2</sub>/GHG is a global issue, and no Virginia efforts alone can be effective unless part of a coherent national strategy. A summary of how other states have responded to similar petitions is attached.

5. How would a determination be made that any regulation adopted had achieved the stated purpose of the regulation?

At a minimum, a comprehensive CO<sub>2</sub>/GHG monitoring program would need to be funded and developed. Unfortunately, CO<sub>2</sub>/GHG are not conducive to a source-specific approach to ambient monitoring because CO<sub>2</sub>/GHG are distributed such that localized differences, even around CO<sub>2</sub>/GHG emitters, is quite small. Also, the contribution for any given emitter would be very small relative to the overall background concentration. DEQ's ability to determine any specific concentration above the background level is restricted by the basic physics of ambient CO<sub>2</sub>/GHG distribution. CO<sub>2</sub>/GHG are ubiquitous components in ambient air. Any ambient monitoring effort would have to be able to identify the natural background component of the CO<sub>2</sub>/GHG concentration.

If measuring ambient CO<sub>2</sub>/GHG was needed for the purposes of determining the effectiveness of any controls, a series of monitors would have to be installed to determine the average background concentration for the Commonwealth. This is both time consuming and cost prohibitive. In addition to the monitors themselves, there are power, shelter, and siting issues that would have to be considered. There is currently no ambient standard for CO<sub>2</sub>/GHG so there is no means to determine the best locations for these monitors. And because there is no existing ambient standard for CO<sub>2</sub>/GHG, there is no standardized technique (federal reference method) for measuring this pollutant.

6. Would the reduction of fossil fuel CO<sub>2</sub>/GHG emissions, given current and foreseeable technologies, be expected to be accompanied by (i) reductions of other emissions such as sulfur oxides, nitrogen oxides, and mercury or other beneficial environmental consequences? (ii) increases of other emissions or other adverse environmental consequences?

Concomitant reductions of other pollutants as a result of CO<sub>2</sub>/GHG control will depend on the control technology utilized; for example, reduction of CO<sub>2</sub>/GHG through combustion practices or energy efficiency

will also contribute to the control of other pollutants resulting from combustion or energy consumption. However, utilization of carbon sequestration may increase the fuel needs of a coal-fired plant by at least 25% to 40%, and thus cause an increase in NO<sub>x</sub> and SO<sub>2</sub> emissions in order to produce the same amount of saleable electricity; furthermore, negative effects to groundwater are expected but have not yet been established. Therefore, the environmental benefits or disbenefits are impossible to calculate at this time.

7. What are the benefits of reducing CO<sub>2</sub>/GHG emissions, including any co-benefits resulting from the reduction of other emissions or other beneficial environmental consequences? Quantify with respect to such items as premature deaths, emergency room visits, asthma attacks, lost workdays, and lost productivity; and estimated dollar benefit to society.

Anticipated benefits of reducing CO<sub>2</sub>/GHG emissions are described in the petition in great detail. DEQ does not have the resources to make any immediate assessments with respect to how the petitioners' assertions, if accurate, would specifically apply in Virginia, nor does DEQ have the resources to make any immediate assessments with respect to societal benefits in more than a general way. One of the reasons for reliance on national programs, as discussed in item 4, is because it affords states access to technical expertise not available at the state level.

There is no information in the record that would indicate that implementation of the petitioners' program would result in a measureable decrease in ambient CO<sub>2</sub>/GHG concentrations in Virginia.

8. What are the harms of any identified increased emissions or adverse environmental consequences resulting from CO<sub>2</sub>/GHG emission reductions? Quantify with respect to such items as increases in premature deaths, emergency room visits, asthma attacks, lost workdays, and lost productivity; and estimated dollar harm to society.

The petitioners do not discuss, nor does DEQ have the resources to identify harms of any identified increased emissions or adverse environmental consequences resulting from CO<sub>2</sub>/GHG emission reductions. DEQ does not have the resources to make any immediate assessments with respect to societal harm in more than a general way. One of the reasons for reliance on national programs, as discussed in item 4, is because it affords states access to technical expertise not available at the state level.

## SUMMARY AND ANALYSIS OF PUBLIC COMMENTS FOR PETITION FOR RULEMAKING CONCERNING CARBON DIOXIDE EMISSIONS

**ANALYSIS OF COMMENTS:** Below is a summary of each person's comment and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the air quality program and the applicable statutory provisions governing the program.

1. **SUBJECT:** General support for the petition.

**COMMENTER:** Tim Jost

**TEXT:** As a resident of the State of Virginia, I ask that you grant this Petition for Rulemaking to adopt a plan to reduce carbon dioxide emissions from fossil fuels by at least 6% per year until 2050, and expand Virginia's capacity for carbon sequestration. The continuing use of coal and oil for energy sources contributes to the climate change crisis, depriving the next generation and those to come of an inhabitable and sustainable planet.

**RESPONSE:** The commenter's request is appreciated.

2. **SUBJECT:** General opposition to the petition.

**COMMENTER:** Citizens for Responsible Governments; Frederik Friis



TEXT: I do not believe this regulatory petition is necessary. It's premature since the U.S. Environmental Protection Agency (EPA) and the federal government are currently exploring this issue. Additionally, Virginia cannot go it alone to effectively reduce global carbon emissions. I respectfully request the board to not pursue this regulatory activity.

RESPONSE: The commenter's request is appreciated. These issues are discussed in greater detail in the following comments.

3. SUBJECT: Public trust doctrine.

COMMENTER: Virginia Manufacturers Association (VMA); Old Dominion Electric Cooperative (ODEC), and Virginia, Maryland, and Delaware Association of Electric Cooperatives (VMDAEC)

TEXT: The petition states:

The public trust doctrine holds that as a co-tenant trustee, the State of Virginia, through its Department of Environmental Quality, holds vital natural resources in trust for both present and future generations of its citizens. These resources are so vital to the well being of all people, including the citizens of Virginia, that they must be protected by this distinctive, long-standing judicial principle. The atmosphere, including the air, is one of the most critical assets of our public trust.

The public trust doctrine holds government responsible, as perpetual trustee, for the protection and preservation of the atmosphere for the benefit of both present and future generations.

The petitioners cite no Virginia law or judicial decisions in support of this purported public trust doctrine in Virginia. They do not because they cannot. There are no Virginia laws or case decisions supporting petitioners' claim that the "public trust doctrine" compels the board to adopt the regulations the petitioners seek.

The Constitution of Virginia (Art. XI, Sections 1 and 2) states, in relevant part:

To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, it shall be the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth. . . . In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the Commonwealth, or with private persons or corporations.

Note the specific terms of the Constitution: preservation and enhancement of the use and enjoyment of the environment and natural resources is the "policy" of the Commonwealth, not a "doctrine" based on public trust. Furthermore, this "policy" is to be implemented by the General Assembly, in part through "agencies of the Commonwealth." There is nothing here that even remotely hints at the public trust doctrine espoused in the petition.

However, there is one specific reference in the Constitution to natural resources held in public trust: "The natural oyster beds, rocks, and shoals in the waters of the Commonwealth shall not be leased, rented, or sold but shall be held in trust for the benefit of the people of the Commonwealth, subject to such regulations and restriction as the General Assembly may prescribe . . ." (Art. XI, Section 3.) The Constitution specifically identifies "natural oyster beds, rocks and shoals in the waters of the Commonwealth" as the only natural resources "held in trust for the benefit of the people of the Commonwealth." In view of these specific designations, there can be no inference that the Constitution accords similar status to ambient air. In short, there is nothing in the Constitution establishing that ambient air in Virginia is held by the government in public trust as the petition asserts.

Nor is there any statutory basis for petitioners' claim that ambient air in Virginia is held by the government in public trust. The only Virginia statute dealing with the environment or natural resources that defines a resource held in public trust is Virginia Code § 28.2-1205, which states in relevant part:

When determining whether to grant or deny any permit for the use of state-owned bottomlands, the Commission shall be guided in its deliberations by the provisions of Article XI, Section I of the Constitution of Virginia. In addition to other factors, the Commission shall also consider the public and private benefits of the proposed project and shall exercise its authority under this section consistent with the public trust doctrine as defined by the common law of the Commonwealth adopted pursuant to § 1-200 in order to protect and safeguard the public right to the use and enjoyment of the subaqueous lands of the Commonwealth held in trust by it for the benefit of the people as conferred by the public trust doctrine and the Constitution of Virginia.

This statute places "subaqueous lands" ("state-owned bottomlands") in public trust for the benefit of the people of Virginia. Neither this nor any other statute places ambient air in public trust.

Finally, there are no judicial decisions in Virginia that apply the public trust doctrine to ambient air. In fact, the scope of the public trust doctrine is narrowly construed in Virginia. In *Palmer v. Com. Marine Resources Com'n* (628 S.E.2d 84, 48 Va. App. 78), the Virginia Court of Appeals stated:

The public trust doctrine in Virginia provides: [T]he state holds the land lying beneath public waters as trustee for the benefit of all citizens. As trustee, the state is responsible for proper management of the resource to ensure the preservation and protection of all appropriate current and potential future uses, including potentially conflicting uses, by the public.

This makes it clear that only "land lying beneath public waters" (i.e., state-owned subaqueous land) is held by the government in public trust in Virginia. In sum, there is no "public trust doctrine" in Virginia that compels the board to adopt the regulations the petitioners seek.

RESPONSE: The commenter's discussion of the concept of "public trust" as it applies in Virginia is appreciated.

4. SUBJECT: National approaches to CO<sub>2</sub> control.

COMMENTER: Virginia Manufacturers Association (VMA); Old Dominion Electric Cooperative (ODEC), and Virginia, Maryland, and Delaware Association of Electric Cooperatives (VMDAEC)

TEXT: Global warming and reduction of GHG emissions are global issues. Global warming is not a local phenomenon and to the extent humanity can craft a "solution" to global warming by reducing CO<sub>2</sub> emissions, that solution cannot be accomplished by disjointed state and local approaches. VMA believes that if any regulation of CO<sub>2</sub> emissions in the United States is deemed necessary and prudent to address global warming, that regulation must be undertaken and applied uniformly throughout the country, not state by state or locality by locality.

For years it has been the policy of the Commonwealth to eschew the imposition of regulatory requirements on its businesses and citizens "which are more restrictive than applicable federal requirements" unless a cogent showing of necessity supports a more restrictive Virginia rule. This principle is codified in § 10.1-1308 A of the Virginia Air Pollution Control Law. Furthermore, § 2.2-4014 of the Virginia Administrative Process Act establishes a procedure whereby the General Assembly reviews regulations during the promulgation or final adoption process. For regulations that are more restrictive than applicable federal requirements, the General Assembly has the opportunity to judge whether such regulations are truly "necessary" in the Commonwealth. VMA believes the board should adhere to this time-honored Virginia approach, eschew the regulation of CO<sub>2</sub> emissions as requested by the petition, and leave any such regulation to the appropriate time and approach determined for the nation by Congress and EPA.

The wisdom of this national approach was recently made clear by the U.S. Supreme Court in its decision in *American Electric Power Co. v. Connecticut* (No. 10-174, June 20, 2011). Connecticut and several other states and localities sued American Electric Power (AEP) and other electric utility companies claiming that emissions of CO<sub>2</sub> from the defendants' coal-fired electric generating plants contributed to global warming and thereby substantially and unreasonably interfered with public rights, in violation of the federal common law of interstate nuisance, or, in the alternative, of state tort law. The plaintiffs asked for a judicial decree setting carbon-dioxide emissions for each defendant at an initial cap, to be further reduced annually (just as the petition does). The Supreme Court rejected the plaintiffs' request, stating:

We hold that the Clean Air Act and the EPA actions it authorizes displace any federal common law right to seek abatement of carbon-dioxide emissions from fossil-fuel fired power plants. Massachusetts made plain that emissions of

carbon dioxide qualify as air pollution subject to regulation under the Act. 549 U. S., at 528–529. And we think it equally plain that the Act “speaks directly” to emissions of carbon dioxide from the defendants’ plants.

The Supreme Court declined to set CO<sub>2</sub> limits for the fossil fuel-fired power plants and instead wisely deferred to Congress and EPA to do so as warranted and appropriate. VMA urges the board to follow the Supreme Court’s approach and defer to Congress and EPA in this matter of national and global interest.

RESPONSE: Climate change and reduction of CO<sub>2</sub>/GHG emissions are indeed global issues that would be most effectively addressed on a global and national level. The board has met and will continue to meet its federal obligations as part of the national strategy for controlling these emissions. A state-specific program for controlling CO<sub>2</sub>/GHG in the manner recommended by the petitioners would have very little meaningful beneficial impact on the climate.

5. SUBJECT: Effect on Virginia's manufacturing community.

COMMENTER: Virginia Manufacturers Association (VMA); Old Dominion Electric Cooperative (ODEC), and Virginia, Maryland, and Delaware Association of Electric Cooperatives (VMDAEC)

TEXT: The petition asks for sweeping and extreme regulation by the board. Virginia manufacturers have made great strides over the past years to increase their energy efficiency but the fact remains that they are energy intensive businesses. Energy is the life blood of Virginia manufacturing. Eliminating or drastically curtailing fossil fuel-fired energy sources as requested by the petitioners would cripple, if not kill, many of Virginia’s manufacturers, especially smaller manufacturers, leading to massive losses of jobs in the Commonwealth.

If Virginia adopts the regulations petitioners seek while other states reject the petition (as Florida has, see below), jobs would migrate at best to other states and at worst to China or other third world manufacturing centers. For the sake of Virginia manufacturing and its work force, VMA urges the board to reject the Draconian and crippling regulations the petitioners seek. If Virginia adopts the regulations petitioners seek and other states do not, Virginia jobs will be lost for essentially no environmental gain. While national regulation of GHG emissions is up to Congress and EPA, they would be well advised to recognize that even the marginal beneficial effect of a national effort to reduce CO<sub>2</sub> emissions is likely to be swamped by the increase in such emissions by China and other third world countries as manufacturing shifts there. If this is so on the national level, how much less effective would CO<sub>2</sub> emission reductions from Virginia be? And at what enormous cost to the livelihoods of countless Virginians?

As noted above, the State of Florida has rejected a virtually identical petition filed by Kids vs. Global Warming and others in that state. In the final order denying the petition, the Secretary of the Florida Department of Environmental Protection stated:

Petitioners state numerous allegations concerning the existence, sources, and potential impacts of climate change as the base for their request that the Department initiate rulemaking to reduce carbon dioxide emissions. Even if such allegations were accurate, which the Department specifically does not decide, the many still-emerging and complex scientific, economic and policy considerations persuade the Department against initiating the requested rulemaking. The Department therefore determines that it not appropriate in the present circumstances to exercise its discretion to initiate the requested rulemaking.

VMA agrees that there are “many still-emerging and complex scientific, economic and policy considerations” that make it clear the board should deny the petition.

RESPONSE: The commenter's discussion of potential economic impacts is appreciated. We agree that there are “many still-emerging and complex scientific, economic and policy considerations” with respect to the issue of CO<sub>2</sub>/GHG control and related impacts.

6. SUBJECT: Regulatory role of the General Assembly.

COMMENTER: Virginia Manufacturers Association (VMA); Old Dominion Electric Cooperative (ODEC), and Virginia, Maryland, and Delaware Association of Electric Cooperatives (VMDAEC)

TEXT: All of the board's authority, including the power to adopt regulations, comes directly and specifically from the General Assembly--see, e.g., § 10.1-1308 (empowering the board to adopt regulations). Frequently the General Assembly provides specific direction to the board with respect to the exercise of its authority. For example, earlier this year the General Assembly limited the authority of the board to require air permits for qualified small fumigation sources under certain conditions. VMA believes any regulation of CO<sub>2</sub> emissions in the Commonwealth should be directly and specifically authorized by the General Assembly. This is a matter with such great economic, environmental, and policy considerations that the board should completely defer to the direction of the legislature reflecting the will of the people of the Commonwealth. In short, VMA believes the board should take no action to impose regulations on CO<sub>2</sub> emissions in the Commonwealth without specific direction from the General Assembly to do so.

RESPONSE: We agree with the commenter that this is a matter with great economic, environmental, and policy considerations that requires a careful approach by the Commonwealth.

7. SUBJECT: Existence and nature of climate change.

COMMENTER: Virginia Coal Association (VCA)

TEXT: The petitioners use the terms "climate change" and "global warming" interchangeably and state that CO<sub>2</sub> from fossil fuel emissions are "largely responsible for the current warming trend." The VCA strongly disagrees. Recent scientific studies show that no global warming is occurring. As discussed in the amici curiae brief filed May 27, 2011 by scientists in support of the petitioners in Coalition for Responsible Regulation, Inc., et al. v. EPA and Lisa Jackson, Administrator (U.S. Court of Appeals for the District of Columbia Circuit) in the consolidated cases challenging EPA's CO<sub>2</sub> endangerment finding, since 1979, when satellite data first became available, regional temperature trends have refuted the notion of global warming: the statistical trend shows no change in the tropics and a decrease in temperature in Antarctica. This satellite data has been confirmed by balloon and buoy data. As the scientists point out in the aforementioned brief, "data establish that various other factors cause typical, short-term (multi-decadal or shorter) changes in the Earth's climate system. The sun, volcanic activity, and oscillations in ocean temperature can all affect the Earth's temperature over relatively short and long time scales. The Earth's climate may be changing, as it always naturally has, but the data do not establish that any changes are caused by CO<sub>2</sub> emissions." It is important to note that the Commonwealth is one of the state petitioners in the aforementioned consolidated cases that is challenging EPA's flawed endangerment finding.

RESPONSE: The commenter's position on the state of the Earth's climate is appreciated.

8. SUBJECT: Economic impacts.

COMMENTER: Virginia Coal Association (VCA)

TEXT: To accomplish the petitioners' request that the board adopt regulations which ensure that CO<sub>2</sub> emissions in Virginia peak in 2012 by requiring that these emissions be reduced by at least 6% per year through at least the year 2050, regulations would have to be adopted which require continuing significant reductions in fossil fuel CO<sub>2</sub> emissions from numerous stationary and mobile sources such as vehicles, power plants, co-gens, factories, lawn mowers, boats, locomotives, etc. Recent electric generation figures show that nearly 40% of the electricity produced by utilities in Virginia comes from burning coal. Most cars, trucks, and other vehicles in the Commonwealth run on gasoline or diesel fuel. A reduction in CO<sub>2</sub> emissions from either of these energy or transportation "baseload sources" would require fuel switching or control technology that is prohibitively expensive or not yet commercially available. Mandating such reductions at the federal level given the economic disruption which would undoubtedly result would be foolish at best. Mandating such reductions in Virginia with no guarantee that any of the other 49 states would follow suit would amount to economic suicide. And mandating these reductions at either the federal or state level as a response to "climate change" or "global warming" concerns with no expectation that these CO<sub>2</sub> reductions will have any impact on atmospheric concentrations of CO<sub>2</sub> or temperature makes no sense whatsoever.

It is instructive to review the research that was conducted on the probable impacts of the Waxman-Markey legislation introduced several years ago. That legislation (which would have imposed much more stringent GHG reductions than those contained in the petition) would have mandated an 83% reduction in U.S. GHG emissions (not just fossil fuel CO<sub>2</sub> emissions) by 2050. An analysis of the projected impact of that legislation on global temperatures using the Model for the Assessment of Greenhouse-gas Induced Climate Change, a climate model simulator developed by

scientists at the National Center for Atmospheric Research with funding from EPA and other organizations, shows that the legislation would have only resulted in a global temperature "savings" of about 0.05°C. And as the author that conducted this analysis pointed out, "[w]ithout a large reduction in the carbon dioxide emissions from both China and India--not just a commitment but an actual reduction--there will be nothing climatologically gained from any restrictions on U.S. emissions." Given the fact that fossil fuel CO<sub>2</sub> emissions in Virginia account for a very small percentage of all the GHG emissions in the United States, it is obvious that the petitioners' requested actions, if implemented in Virginia, will have virtually no impact on global temperatures or atmospheric CO<sub>2</sub> concentrations.

RESPONSE: As discussed in the response to comment 4, climate change and reduction of CO<sub>2</sub>/GHG emissions are global issues that would be most effectively addressed on a global and national level. A state-specific program for controlling CO<sub>2</sub>/GHG in the manner recommended by the petitioners would have very little meaningful beneficial impact on the climate.

9. SUBJECT: GHG accounting, verification and inventory; state-by-state approaches.

COMMENTER: Virginia Coal Association (VCA)

TEXT: Given the fact that the implementation of the petitioners' requested actions will have virtually no impact on atmospheric concentrations of CO<sub>2</sub> or global temperatures, any effort to implement the recommendation to implement a statewide GHG accounting, verification and inventory will result in wasted expenditures of state and private funds.

VCA would like to specifically address a board member's question at the board's June 10, 2011 meeting concerning the appropriateness of the petition's state-by-state approach. VCA believes that such an approach is totally inappropriate and could result in a checkerboard approach to air regulation across the country which does great harm to the nation's economy without having any impact on climate or global temperatures. VCA understands that the petitioners have filed this same petition in all 49 other states and the District of Columbia. Some states could unwisely decide to implement the petition's requested actions and thereby put fossil fuel CO<sub>2</sub> emission sources within their borders at a costly competitive disadvantage to their competitor's sources in other states that decline to implement such actions. Most checkerboard air emissions regulatory schemes are prohibited within Virginia by statute. Virginia Code § 10.1-1321 provides, in part, "[n]o ordinance or amendment, except an ordinance or amendment pertaining solely to open burning, shall be approved by the board which regulates any emission source that is required to register with the board or to obtain a permit pursuant to this chapter and the board's regulations." The legislature wisely enacted this prohibition in order to provide a consistent regulatory and economic climate for business. The board would be wise to reject this petition for similar reasons.

RESPONSE: As discussed in the response to comment 4, climate change and reduction of CO<sub>2</sub>/GHG emissions are global issues that would be most effectively addressed on a global and national level. A state-specific program for controlling CO<sub>2</sub>/GHG in the manner recommended by the petitioners would have very little meaningful beneficial impact on the climate. Note that § 10.1-1321 applies to "the governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution" (emphasis added), not the board or its regulations in general; however, § 10.1-1308 does require that regulations more restrictive than the federal be reported to the General Assembly.

10. SUBJECT: Existing regulations.

COMMENTER: Dominion Virginia Power

TEXT: On December 15, 2009, EPA issued its final rule, "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act" (74 FR 66495), finding that GHGs "endanger both the public health and public welfare of current and future generations." On April 1, 2010, EPA and the federal Department of transportation's national Highway Safety Administration announced a joint rule establishing a program that will dramatically reduce GHG emissions and improve fuel economy for new cars and trucks sold in the United States (75 FR 25324 and 74252). These rules took effect in January 2011 and established GHG emissions as regulated air pollutants under the federal Clean Air Act.

In May 2010, EPA issued the final "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule" (75 FR 31513) that, combined with these prior actions, required Dominion to obtain permits and meet best available control technology (BACT) for GHG emissions for new and modified facilities over certain size thresholds.

EPA has issued draft guidance for GHG permitting, including BACT. EPA has also announced a schedule for proposing regulations of GHG emissions under New Source performance Standards (NSPSs) by September 30, 2011. A final GHG NSPS is expected by May 2012.

On July 28, 2010, Virginia provided a letter to EPA, in accordance with an EPA request to all states in the tailoring Rule, with confirmation that the Commonwealth of Virginia has the authority to regulate GHGs in its prevention of significant deterioration (PSD) program. The letter also confirmed that then current Virginia rules require regulating GHGs at the 100/250 tons per year (tpy) threshold that generally applies to all air pollutants subject to PSD and that is provided under the federal Clean Air Act PSD provisions of § 169(I), rather than at the higher thresholds set in the Tailoring Rule. In the SIP Narrowing Rule of December 30, 2010, EPA withdrew its approval of Virginia's State Implementation Plan (SIP)--among other SIPs--to the extent that the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the tailoring Rule. As a result, Virginia's federally approved SIP provides the state with authority to apply PSD to GHG-emitting sources and requires new and modified sources to receive a PSD permit based on GHG emissions, but only if those sources emit at or above the Tailoring Rule thresholds. On October 11, 2010, the board's final rule, Permits for Stationary Sources of Pollutants Subject to Regulation (9VAC5-85) was published in the Virginia Register (27 VAR 398). On May 13, 2011, EPA approved a Tailoring Rule SIP revision which amended the state's GHG permitting thresholds.

Beginning this year, for certain business segments, Dominion needs to report GHG emissions under EPA's Mandatory Reporting Rule (40 CFR Part 98).

Following the reasoning asserted by the U.S. Supreme Court in its June 20, 2011 decision on *AEP v. Connecticut et al.*, the federal Clean Air Act and EPA's subsequent actions to address GHG mentioned above displace the need for the board to initiate a rulemaking based on the petitioners' requests. A state-by-state regulatory approach is not appropriate for regulation of GHGs, particularly since EPA has moved forward with GHG regulations and is contemplating additional GHG regulations.

**RESPONSE:** As discussed in the response to comment 4, climate change and reduction of CO<sub>2</sub>/GHG emissions are global issues that would be most effectively addressed on a global and national level. A state-specific program for controlling CO<sub>2</sub>/GHG in the manner recommended by the petitioners would have very little meaningful beneficial impact on the climate. The board has met and will continue to meet its federal obligations as part of the national strategy for controlling these emissions.

11. **SUBJECT:** Further federal GHG regulations.

**COMMENTER:** Dominion Virginia Power

**TEXT:** EPA is preparing to regulate GHG emissions from new, modified, and existing electricity generating units under § 111 of the federal Clean Air Act and is expected to issue proposed rules by September 30, 2011. In an effort to engage in a dialogue with many industrial and non-profit stakeholders on GHG regulation under the NSPS program, EPA sponsored a number of "listening sessions" in February. Dominion participated in the February 4 sessions chaired by the EPA Associate Administrator for Air and Radiation. Dominion urged EPA to consider cost-effective approaches that would provide regulatory certainty on how to achieve GHG reductions. Dominion believes this could best be achieved by EPA exercising the flexibility that exists under the NSPS process, including allowing states to advance market-based approaches and recognizing existing state and regional GHG programs.

There are other legislative proposals that may be considered that would have an indirect impact on reducing GHG emissions from the power sector. President Obama has called on Congress to enact a Clean Energy Standard requiring 80% of the nation's electricity to be produced from "clean" energy technologies by 2035. This proposal was unveiled in the President's State of the Union address in January 2011 and highlighted again in his March 30, 2011 energy security speech. As a first step in the legislative process, Senate Energy and Natural Resources Committee Chairman Bingaman and Ranking Member Murkowski published a Clean Energy Standard (CES) white paper on March 21 with 6 main questions and 36 clarifying questions on structuring a federal CES. Dominion's general views are that should Congress determine that a CES is a necessary national energy strategy, its purpose must be to promote the deployment of advanced energy generation technologies and to ensure a diverse supply of lower-emitting fuels for electricity generation. The success of a cost-effective CES also depends on several complementary policies including sustained investments in research development and deployment of advanced coal with carbon capture and storage and advanced

nuclear technologies. We believe that continuation of federal tax incentives that promote all types of renewable energy resources remain necessary.

RESPONSE: The discussion of current legislative activities is appreciated. The board has met and will continue to meet its federal obligations as part of the national strategy for controlling these emissions.

12. SUBJECT: Current Dominion activities.

COMMENTER: Dominion Virginia Power

TEXT: Dominion is already taking strong, proactive action to protect the environment and address climate change while meeting the future energy needs of its fast-growing service territory. This action includes the following:

- Converting 3 Virginia coal power plants to biomass as part of a larger strategy to diversify our portfolio in meeting our customers' energy needs, adding renewable energy, while also addressing CO<sub>2</sub> emissions. The power stations to be converted to biomass are located in the town of Altavista, the city of Hopewell, and Southampton County, and will produce approximately 50 megawatts (MW) of electricity each. If the conversions are approved by DEQ and the State Corporation Commission, they could begin burning clean, renewable biomass in 2013. Dominion already burns 100% biomass at its plant in Hurt, Virginia, which is a 79.6 MW wood-burning generating unit that began commercial service in 1994.
- Constructing the 585 MW Virginia City Hybrid Energy Center, which will be one of the cleanest power plants of its kind. The circulating fluidized bed unit was permitted to use coal and up to 20% clean renewable biomass.
- Increasing energy efficiency, conservation, and renewable power efforts to meet growing energy demands from commercial, industrial, and residential customers. Virginia's landmark 2007 re-regulation legislation includes strong incentives for each of these critical first steps in addressing climate change.
- Undertaking a major conservation initiative to begin efforts to meet the aggressive 10% conservation target in the 2007 Virginia legislation. We view energy efficiency, conservation, and renewable power as major company priorities.
- Adding more than 2,600 MW of non-emitting nuclear generation to its generation mix since 2000; although on April 28, 2011, Dominion announced plans to sell its 556 MW Kewaunee Power Station. We are receiving an early site permit from the Nuclear regulatory Commission (NRC) for possible addition of approximately 1,500 MW of nuclear generation in Virginia. Dominion has also selected a reactor technology for the potential unit.
- Upgrading nuclear power stations in Connecticut and Wisconsin to improve their efficiency and reduce emissions in its generation fleet.
- Working with Virginia Tech to submit an application to the federal Department of Energy (DOE) to obtain funding for a 50/50 share of a \$580M, 70 MW carbon capture and sequestration project at the Virginia City Hybrid Energy Center. Although DOE announced that the project had not been selected, Virginia Tech continues to study the region for potential sites to store large amounts of CO<sub>2</sub> from power plants and to recover coal bed methane for fuel.

RESPONSE: The commenter's description of its efforts to address climate change is appreciated.

## High Priority Violators (HPV's) for the Third Quarter, 2011

### NOV's Issued from April through June 2011

DEQ Region	Facility	Brief Description	Status
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PRO	<b>Hopewell Regional Wastewater Treatment Facility (WWTP)</b>  Hopewell, Virginia Hopewell City  Registration No. 50735  SIC 4952 Sewage Systems NAICS 221320 Utilities, Water, Sewage and Other Systems	<b>Discovery dates:</b> 02/04/2011  <b>Alleged violations:</b> Failure to meet 92% HAP mass removal present in wastewater.	<b>NOV</b> - Issued 05/25/2011  <b>Additional Information:</b> This NOV cites the same violations as the EPA NOV issued on 12/17/2010.
PRO	<b>Kinder Morgan Southeast Terminals LLC –Terminal 1</b>  Richmond, Virginia  Registration No. 50258  SIC 5171 Petroleum Bulk Station & Terminal NAICS 424710 Petroleum Bulk Station & Terminal	<b>Discovery dates:</b> 03/22/2011  <b>Alleged violations:</b> Failure to record data for the Vapor Recovery System.	<b>NOV</b> - Issued 06/10/2011  <b>Additional Information:</b>

**NOV's and CO's Issued from April through June 2011**

DEQ Region	Facility	Brief Description	Status
BRRO	<b>Dynax America Corporation</b>  Boutetourt County, Virginia  Registration No. 21279  SIC 3714 Motor Vehicle Parts NAICS 336350 Transportation/Motor Vehicle Parts Mfg.	<b>Discovery dates:</b> 03/16/2011  <b>Alleged violations:</b> Failure to meet the required 90% valid data capture required by 40 CFR Part 63 Subpart JJJJ (MACT-Paper and Other Web Coating).	<b>NOV</b> - Issued 04/19/2011 <b>CO</b> - Issued 06/17/2011 <b>Civil Charge</b> - \$14,040.40 (Paid)  <b>Additional Information:</b> <b>Revise capture system monitoring plan by 8/1/11.</b>
PRO	<b>Super Radiator Coils</b>  Chesterfield, Virginia  Registration No. 50906  SIC 3585 Refrigeration & Heating Equipment NAICS 333415 Refrigeration & Heating Equipment Manufacturer	<b>Discovery dates:</b> 04/04/2011  <b>Alleged violations:</b> Failure to submit the Title V Permit renewal application within required timeframe.	<b>NOV</b> - Issued 05/09/2011 <b>CO</b> - Issued 05/23/2011 <b>Civil Charge</b> - \$4,836.40 (Paid)  <b>Additional Information:</b> Application has been submitted.



CO's Issued from April through June 2011.

PRO	<p><b>Honeywell International Inc.</b></p> <p>Hopewell, Virginia</p> <p>Registration No. 50232</p> <p>SIC 2869, 2899, 2819 Industr. Organic and Inorganic Chemical NEC, Chemical &amp; Chem. Prep NAICS 325199 Chemical Mfg.</p>	<p><b>Discovery date:</b> 04/01/2010</p> <p><b>Alleged violations:</b> Honeywell was unable to provide records documenting opacity observations, and 2/2010 for a number of various processes, construction without a permit and exceeding the annual NOx limit in for the Area 8/16 thermal oxidizer in 2006 and 2007.</p>	<p><b>NOV</b> - Issued 10/26/2010 <b>CO</b> - Issued 04/08/2011 <b>Civil Charge</b> - \$363,542.00 (paid)</p> <p><b>Additional Information:</b> Honeywell will develop and implement a computerized task list to ensure compliance tasks are conducted.</p>
NRO	<p><b>King George Landfill, Inc.</b></p> <p>King George, Virginia</p> <p>Registration No. 40903</p> <p>SIC 4953 Refuse Systems NAICS 562212 Admin. and Support Waste Management</p>	<p><b>Discovery date:</b> 09/07/2010</p> <p><b>Alleged violation:</b> Test Results demonstrate excess SO2 emissions from the three Solar Centaur Combustion Turbines.</p>	<p><b>NOV</b> - Issued 09/15/2010 <b>CO</b> - Issued 04/18/2011 <b>Civil Charge</b> - \$40,000.00 (paid)</p> <p><b>Additional Information:</b> The Facility stack tested and will continue to monitor sulfur content of the treated landfill gas.</p>
NRO	<p><b>GenOn Mid-Atlantic LLC / GenOn Potomac River LLC (pka Mirant)</b></p> <p>Alexandria, Virginia</p> <p>Registration No. 70228</p> <p>SIC 4911 Electrical Services NAICS 221112 Utilities – Electric Power Generation, Transmission and Distribution</p>	<p><b>Discovery dates:</b> 02/04/2010 through 01/13/2011</p> <p><b>Alleged violations:</b> Failure to maintain and operate in a manner consistent with air pollution control practices for minimizing emissions and provide all required data in quarterly CEM Report.</p> <p>Exceeded permitted limits for PM emissions (including condensable) and the visible emissions.</p> <p>Combustion of non-permitted fuel and coal with an ash content above 11.0%.</p> <p>Substituting Sodium Bicarbonate (SBC) as a dry sorbent for Sodium Sesquicarbonate (Trona)</p>	<p><b>1<sup>st</sup> NOV</b> - Issued 04/06/2010 <b>2<sup>nd</sup> NOV</b> - Issued 05/12/2010 <b>3<sup>rd</sup> NOV</b> - Issued 07/28/2010 <b>4<sup>th</sup> NOV</b> - Issued 10/22/2010 <b>5<sup>th</sup> NOV</b> - Issued 02/08/2011 <b>CO</b> - Issued 05/06/2011 <b>Civil Charge</b> - \$275,562.00 (paid)</p> <p><b>Additional Information:</b> The Facility agreed to submit Standard Operating Procedures (for PM-CEMS, dry-sorbent usage, and ash content of coal), conduct a Relative Response Audit on Stacks 1 and 4, and submit methodology for meeting compliance with Conditions 19 and 41 of the July 31, 2008 State Operating Permit.</p>
VRO	<p><b>Neuman Aluminum Impact Extrusion, Inc.</b></p>	<p><b>Discovery dates:</b> 03/16/2011</p>	<p><b>NOV</b> - Issued 09/13/2010 <b>De-referral</b> - Closed 05/09/2011</p>

Waynesboro, Virginia Registration No. 81346 SIC 3411 Metal Cans NAICS 332431 Fabricated Metal Product Manufacturing	<b>Alleged violations:</b> Failure to meet trichloroethylene (TCE) emissions limit by the May 3, 2010 compliance deadline.	<b>Additional Information:</b> DEQ and the Facility have determined that the previously submitted emissions data was invalid. The updated emission values demonstrate compliance with the May 3, 2010 deadline.
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### CO's In Development – Previously Reported NOV's

NRO	<b>VADATA Manassas Exchange Data Center</b>  Manassas, Virginia  Registration No. 73741  SIC 7374 Data Processing & Preparation NAICS 518210 Data Processing, Hosting, and Related Services	<b>Discovery dates:</b> 03/28/2011  <b>Alleged violations:</b> Construction and Operation without a permit.	<b>NOV</b> - Issued 03/29/2011  <b>Additional Information:</b>
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### UPDATES FOR THE THIRD QUARTER, 2011

Actions occurring from July 1, 2011 through August 11, 2011

<i>*The following actions have occurred post quarter and will be included in the next quarterly report.</i>		
DEQ Region	<b>Facility</b>	<b>Status Update</b>
NRO	<b>VADATA Manassas Exchange Data Center</b>	A CO was executed on August 5, 2011 and included a civil charge of \$261,638.00.

### EPA CD's In Development – Previously Reported NOV's

<i>**The inspections at the Hopewell facilities were conducted as part of EPA Region III's Hopewell Geographic Initiative, which is an enforcement strategy created, in part to better understand the transfer of volatile organic compounds and hazardous air pollutants between facilities in the Hopewell geographic air shed.</i>			
**EPA	<b>Ashland Aqualon Functional Ingredients (Hercules)</b>  Hopewell, Virginia Hopewell City  Registration No. 50363  SIC 2869 Industr. Organic Chemical NEC NAICS 325199	<b>Discovery date</b> – 11/08/2007  <b>Alleged violations:</b> Alleged violations of the Cellulose MACT (40 CFR 63 Subpart UUUU) and the associated Leak Detection and Repair (LDAR) program.	<b>EPA NOV</b> - Issued 04/02/2009  <b>Additional Information:</b> NOV Meeting was held with EPA, DEQ, and the Responsible Party on 7/8/09 and 2/1/11.

	Chemical Mfg.		
**EPA	<p><b>Hopewell Regional Wastewater Treatment Facility (WWTP)</b></p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50735</p> <p>SIC 4952 Sewage Systems NAICS 221320 Utilities, Water, Sewage and Other Systems</p>	<p><b>Discovery dates</b> – 11/07/2007</p> <p><b>Alleged violations:</b> Violations of 40 CFR 63 Subpart VVV (Publically Owned Treatment Works - POTW) and Reasonably Available Control Technology (RACT) that include failure to provide appropriate notification, meet control requirements, conduct inspections and monitoring, properly calculate emission values.</p> <p>Violations of 40 CFR 63 Subpart VVV (Publically Owned Treatment Works - POTW) and Reasonably Available Control Technology (RACT) for failure meet control requirements.</p>	<p><b>EPA 1<sup>st</sup> NOV</b> - Issued 07/06/2009 <b>EPA 2<sup>nd</sup> NOV</b> - Issued 12/17/2010</p> <p><b>Additional Information:</b> NOV Meeting was held with EPA, DEQ, and the Responsible Party on 9/23/09 and 03/09/2011.</p>
**EPA	<p><b>DuPont Teijin Films</b></p> <p>Hopewell, Virginia Chesterfield County</p> <p>Registration No. 50418</p> <p>SIC 2821 Plastic Material/Synthetic resins NAICS 325211 Chemical - resin, Synthetic rubber, and artificial synthetic fibers.</p>	<p><b>Discovery dates</b> – 04/18/2008</p> <p><b>Alleged violations:</b> <b>1<sup>st</sup> NOV</b> - Violations of 40 CFR 63 Subpart JJJ (Polymers and Resins Group IV), Subpart H (Equipment Leaks), and Subpart EEEE (Organic Liquid Distribution (Non-Gasoline) that include improper use of emission debits and credits; failure to provide certifications, reports and plans; improper emission controls; and failure to identify and repair leaking components.</p> <p><b>2<sup>nd</sup> NOV</b> – Further violations of 40 CFR 63 Subpart JJJ (Polymers and Resins Group IV), and Subpart H (Equipment Leaks), that include improper use of emission debits and credits; failure to provide certifications, reports and plans; and improper emission controls.</p>	<p><b>EPA 1<sup>st</sup> NOV</b> - Issued 07/17/2009 <b>EPA 2<sup>nd</sup> NOV</b> - Issued 12/7/2010</p> <p><b>Additional Information:</b> NOV Meetings have been held with EPA, DEQ, and the Responsible Party on 9/10/09 and 2/2/2011.</p>
**EPA	<p><b>Honeywell International Inc.</b></p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50232</p> <p>SIC 2869, 2899, 2819 Industr. Organic Chemical NEC, Chemical &amp; Chem. Prep, NEC, Industrial Inorganic Chemicals NAICS 325199 Chemical Mfg.</p>	<p><b>Discovery date</b> – 11/06/2007</p> <p><b>Alleged violations:</b> <b>1<sup>st</sup> NOV</b> - Alleged violations of the Benzene Waste NESHAP (40 CFR 61 Subpart FF) and the associated Leak Detection and Repair (LDAR) program for the Organic HAPs from Equipment Leaks MACT (40 CFR 63 Subpart H)</p> <p><b>2<sup>nd</sup> NOV</b> - Annual NOx and PM10 emission limit exceedances in 2004, 2005, 2006, and 2007 at the A, C, D, and E trains of the Area 9 hydroxylamine production unit.</p>	<p><b>EPA 1<sup>st</sup> NOV</b> - Issued 03/10/2009 <b>EPA 2<sup>nd</sup> NOV</b> - Issued 08/21/2009</p> <p><b>Additional Information:</b> NOV Meetings have been held with EPA, DEQ, and the Responsible Party on 5/27/09, 11/17/09, 03/25/10, 11/10/2010 and 1/26/2011.</p>

**EPA	<b>Smurfit-Stone Container Corp. / Hopewell Mill</b>  Hopewell, Virginia  Registration No. 50370  SIC 2631 Pulp Mills NAICS 322130 Pulp, Paper, and Paperboard Products	<b>Discovery dates – 07/27/2010</b>  <b>Alleged violations:</b> Failure to operate in a manner to demonstrate compliance with HAP reduction requirements.  Failure to submit periodic startup, shutdown and malfunction reports.	<b>NOV</b> - Issued 09/27/2010  <b>Additional Information:</b> NOV Meeting was held with EPA, DEQ, and the Responsible Party on 01/31/2011.