TENTATIVE AGENDA
STATE AIR POLLUTION CONTROL BOARD MEETING
WEDNESDAY, SEPTEMBER 29, 2004

HOUSE ROOM C, GENERAL ASSEMBLY BUILDING
9TH & BROAD STREETS
RICHMOND, VIRGINIA

Convene - 1:00 P.M.

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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 arising as to 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 their 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 one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register 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 and consent special orders), 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. If a public hearing is held, there is a 45-day comment period and one public hearing.

In light of these established procedures, the Board accepts public comment on regulatory actions, 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 participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding 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 this permit. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then, in accordance with § 2.2-4021, allow others who participated in the prior proceeding (i.e., those who attended the public hearing or commented during the public comment period) up to 3 minutes to exercise their right to respond to the summary of the prior proceeding presented to the Board. Those persons who participated in the prior proceeding 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 Board meeting. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

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 participated 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. For 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, an additional public comment period may be announced by the Department 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 pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

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 10009, Richmond, Virginia 23240, phone (804) 698-4378; fax (804) 698-4346; e-mail: cmberndt@deq.virginia.gov.

Minor New Source Review (9 VAC 5 Chapter 80, Rev. K04) - Request to Publish Proposal for Public Comment and Use the Fast Track Process: On May 21, 2002, the Board adopted a major revision to the minor NSR program. The new Article 6 became effective on September 1, 2002 in order to provide a period to train the Department staff. The 2002 adoption reflected a major revision to the minor NSR program. The evolution of 9 VAC 5-80-10 and 11 to Article 6 of Part II of 9 VAC 5 Chapter 80 resulted in several major changes being made to the program enabling regulation. One of these changes was to convert from a permit applicability approach that looks at physical or operational changes at a single emissions unit to determine applicability to an approach, like that of the prevention of significant deterioration (PSD) program, which looks at the changes from a source-wide perspective to determine applicability. However, unlike PSD, the determination of applicability does not look back at historical emissions changes but looks only at the emissions changes at the other emissions units directly resultant from the physical or operational change at the affected emissions unit. Applicability is based on the net emissions

increase in emissions from all affected units in the project.

While the netting concept, essential to determining applicability, works well in major NSR, it is not working in minor NSR, primarily due to the lack of an underlying permit program to make the netting operations enforceable.

Implementation of the new regulation has placed a significant burden upon the Department staff. Under the new regulation, determination of permit and BACT applicability cannot be made with any reasonable degree of efficiency, effectiveness or consistency. Interpreting the new regulation is a major time-consuming workload for the Department.

After almost two years of training, discussions, regulatory interpretations, and guidance documents, little progress has been made toward implementing the program in a satisfactory manner. We have determined that the current situation cannot continue and that the regulation must be fixed forthwith. The preferred and simplest course of action is to eliminate the netting concept and return the regulation to its previous applicability and BACT determination structure that is currently in the EPA-approved SIP and this new regulatory action accomplishes just that.

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 still be subject to a public hearing to satisfy federal public participation requirements and a 60-day public comment period to satisfy state public participation requirements. If an objection to the use of the fast-track process is received within the 60-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, the Department will (i) file notice of the objection 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 30 days after the end of the public comment period.

The substantive change that is being made to the program is to convert from a permit applicability approach that looks at the changes from a source wide perspective to determine applicability to an approach which looks at each physical or operational change to the source individually to determine applicability. Currently applicability is based on the net emissions increase in actual emissions based on all the source wide emissions changes directly resultant from the physical or operational change. The revised program would base permit applicability on the uncontrolled emissions from each individual physical or operational change to the source. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program have been restructured to increase clarity. Finally, a number of other provisions have been rewritten to increase clarity.

Ozone Transport Region New Source Review - Public Participation Report and Request for Board Action: On April 30, 2004 (69 FR 23951), the U.S. Environmental Protection Agency (EPA) added a new subpart X to 40 CFR Part 51 as part of the implementation of the 8-hour ozone standard. This section requires that if an area is designated attainment or unclassifiable but is located in an Ozone Transport Region (OTR), the state implementation plan (SIP) must include provisions to implement the requirements of §§ 172(c) and 173 of the federal Clean Air Act as if the area were classified as moderate nonattainment for the 8-hour ozone standard.

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 EPA regulations, the state regulations are exempt from all state public participation requirements under the provisions of § 2.2-4006 A 4 c of the Administrative Process Act.

To solicit comment from the public on the proposed regulation amendments, the department issued a notice that

provided for receiving comment during a comment period and at a public hearing. No comment was received on this action.

Below is a brief summary of the amendments:

1. Language been added to indicate that sources in the Ozone Transport Region are subject to Article 9. The statement that areas located in the OTR are subject regardless of their nonattainment status has been added to emphasize this applicability as established by § 184(b)(2) of the federal Clean Air Act. [9 VAC 5-80-2000 B]

2. A new subsection has been added to emphasize the portion of the rule directly affected by inclusion of the OTR: offset requirements for ozone nonattainment areas classified as moderate. [9 VAC 5-80-2000 C]

3. The definition of major stationary source has been modified to include sources which emit or have the potential to emit 100 tons per year or more of nitrogen oxides (as required by § 302(j)) or 50 tons per year of volatile organic compounds in the OTR (as required by § 184(b)(2)). [9 VAC 5-80-2010 C]

4. The definition of OTR is identical to that found in 40 CFR 51.900(o); the list of areas has been added to establish the legal authority for enforcement of the regulations in these areas. [9 VAC 5-80-2010 C]

Permit Application Fees (Rev. L04) - Request for Board Action: During the June board meeting, the board adopted regulations (Rev. C04) requiring permit application fees from applicants for a permit for a new major stationary source. A technical error was made in the new regulation, which will require permit application fees from applicants for a permit to expand certain major stationary sources. The Department believes that such an interpretation of the new regulation is beyond the intent of the law and is inconsistent with the rest of the regulation. The Department seeks to correct this technical error.

The Department is requesting approval of draft final regulation amendments that meet state statutory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the Code of Virginia.

Because the state regulations consist only of a correction of a technical error, the state regulations are exempt from all state public participation requirements under the provisions of § 2.2-4006 A 3 of the Administrative Process Act. Below is a brief summary of the amendment.

The applicability section of Chapter 80, Article 10 lists "permit applications for the construction of a major source, as defined in 40 CFR 63.2" among those applications that are subject to permit application fees. The qualifying phrase "at an undeveloped site" has been added to subdivision 9 VAC 5-80-2250 A 1 b.

Report To The State Air Pollution Control Board Concerning High Priority Violators (HPVs) For The Second Quarter, 2004

ACTIVE CASES — Table A *			
DEQ Region	Facility Name and location	Brief Description	Status
NRO	Covanta Alexandria Arlington, Inc., Arlington (MSW incinerator)	Alleged emission exceedances and failure to keep certain records in violation of PSD permit	NOV issued 4/18/02; Consent Order dated 3/20/03 imposed a civil fine of $14,695 (in bankruptcy – fine not paid)
NRO	Potomac River Generating Station/Mirant, Alexandria	Alleged exceedance of ozone season NOx emission limit of 1,019 tons contained in state operating permit by over 1,000 tons	NOV issued 9/10/03; revised NOV issued 10/20/03; NOV issued by EPA 1/22/04; pending

NRO	Master Print, Inc., Newington, Fairfax County (printer)	Alleged violation of VOC emissions limit; exceedance of ink and cleaning solution throughput limits; various recordkeeping violations	NOV issued 6/25/04; pending
PRO	Carry-On Trailer Corporation, Callao, Northumberland County (manufacturer)	Alleged exceedances of emissions limits and throughput limits for ethylbenzene, xylene, and 2-bytoxyethanol in violation of permit requirements; unpermitted modification of paint composition	NOV issued 4/13/04; pending
PRO	Virginia State University, Petersburg	Alleged failure to stack test boiler; failure to install, maintain, and operate continuous opacity monitors; failure to perform visual opacity inspections; various recordkeeping violations	NOV issued 5/28/04; pending
SCRO	Goodyear Tire and Rubber Co., Danville	Alleged failure to conduct stack test on banbury mixer w/in 180 days of issuance of Title V permit	NOV issued 7/17/03; pending
SCRO	Goodyear Tire and Rubber Co., Danville	Alleged exceedance of particulate emissions limit from banbury mixer in Title V permit	NOV issued 12/8/03; pending
SCRO	Goodyear Tire and Rubber Co., Danville	Alleged violations of Title V permit's testing, monitoring, recordkeeping, and report requirements that substantially interfered with DEQ's ability to determine compliance with emissions limits	NOV issued 4/27/04; pending
SCRO	Huber Engineered Woods, LLC (f/k/a JM Huber Corp.), Halifax County (strandboard manufacturer)	Alleged exceedance of CO and formaldehyde emissions limits contained in Title V permit discovered by stack test (CO limit 8.93 lb./hr. - stack test result 22.6 lb./hr. / formaldehyde limit .14 lb./hr.- stack test result .95 lb./hr.); pervasive exceedances of permit's 59,600 sq. ft. hourly strandboard production limit	NOV issued 12/31/03; pending
SCRO	Huber Engineered Woods, LLC (f/k/a JM Huber Corp.), Halifax County (strandboard manufacturer)	Alleged continued violation of CO emissions limit	NOV issued 4/22/04;pending
SCRO	Huber Engineered Woods, LLC (f/k/a JM Huber Corp.), Halifax	Alleged continued violation of formaldehyde emissions limits	NOV issued 6/23/04; pending

	County (strandboard manufacturer)		
SCRO	Dominion Resources/Clover Power Station Clover, Halifax County (coal-fired power plant)	Alleged exceedances of PM emissions limits (PM limit = 81.7 lb./hr; .02 lb./MMBTu - stack test result for Unit 1= 112.89lb./hr.; .024 lb./MMBTu; for Unit 2 = 96.84 lb./hr.; .023 lb./MMBTu	NOV issued 6/21/04; pending
SWRO	Galax Energy Concepts, LLC Galax, Carroll County (wood burning power plant)	Alleged violation of Title V permit certification and deviation reporting requirements; failure to properly enclose wood waste area	NOV issued 5/24/04; pending
TRO	US Navy Little Creek Amphibious Base, Virginia Beach (portion of base related to vehicle and equipment fueling)	Alleged exceedances of Title V Permit annual throughput limit of 5,584,000 gal. (calculated monthly as the sum of each consecutive 12 mo. period) for gasoline, diesel, and kerosene by approx. 4,700 gal. Per mo. for the mos. of March, April, May, July, and August 2003	NOV issued 2/23/04; pending
VRO	Merck & Co., Inc., Rockingham County (pharmaceutical manufacturer)	Alleged exceedance of emission limit for methyl chloride in synthetic minor HAP permit by over 4.5 tons; failure to adequately measure wastewater influent for HAPs as required by permit	NOV issued 12/11/03; pending
WCRO	Cinergy Solutions of Narrows, LLC, Narrows, Giles County (power plant)	Alleged exceedance of opacity limits	NOV issued 5/12/04; pending
WCRO	Magnox Pulaski Inc., Pulaski, Pulaski County (magnetic tape manufacturer)	Numerous alleged violations of Title V permit recordkeeping, monitoring, and operational requirements	NOV issued 5/8/03; pending
WCRO	Norfolk Southern Corp., Roanoke (railroad yard)	Alleged failure to conduct periodic monitoring (including visual emissions evaluations) on certain equipment in violation of Title V permit	NOV issued 4/22/04; pending
WCRO	Southern Finishing Co., Martinsville, Henry County (furniture	Alleged operation of unpermitted spray booths, improperly maintained air pollution control equipment, and numerous MACT and Title V permit violations	NOV issued 5/27/03; Consent Order dated 10/17/03 imposed a civil fine of $44,738.67 and SEP requiring installation of spray booth filters; Consent Order

	manufacturer)		violated by failure to pay substantial portion of the civil fine by the due date of 11/17/03
WCRO	Southern Finishing Co., Martinsville, Henry County (furniture manufacturer)	Alleged failure to comply with 10/17/03 Consent Order by failing to pay $41,072 of the $44,738,67 civil fine required by the Consent Order by the due date of 11/17/03	NOV issued 1/5/04; pending
WCRO	Southern Finishing Co., Martinsville, Henry County (furniture manufacturer)	Alleged violations of, among other things, MACT subpart JJ work standards and recordkeeping requirements; installation of wood spray booth w/o permit; defective spray booth filters; failure to conduct periodic monitoring and inspections; failure to submit compliance certification and other required reports; failure to complete SEP required by 11/17/03 Consent Order	Dual NOVs issued 6/3/04; pending
WCRO	Roanoke Electric Steel Corp., Roanoke (specialty steel manufacturer)	Alleged failure to conduct periodic monitoring (including visual emissions evaluations) on baghouse #5 in violation of Title V permit	NOV issued 5/19/04; pending
WCRO	Wolverine Gasket Division – Cedar Run Plant, Blacksburg, Montgomery County (automotive parts manufacturer)	Alleged by-passing of pollution control equipment and failure to properly maintain pollution control system	NOV issued 3/19/03; Consent Order dated 12/16/03 imposed a civil fine of $10,500 and required a pollution prevention SEP that reduces wastewater discharges by 70%
WRCO	Wolverine Gasket Division – Cedar Run Plant, Blacksburg, Montgomery County (automotive parts manufacturer)	Alleged violation of VOC control/destruction efficiency requirement for thermal incinerator controlling emissions from coating line (required destruction efficiency = 98%; tested efficiency = 97.34%)	NOV issued 5/27/04; pending

* Table A includes the following categories of HPV cases:

1) Those initiated by a Notice of Violation (NOV) issued prior to or during the second quarter of 2004 that have not been settled by Consent Order, and;

2) Those settled by Consent Order prior to or during the second quarter of 2004 where the alleged violator has not complied with substantially all of the terms of the Consent Order.

RESOLVED CASES — Table B **			
DEQ Region	Facility Name and location	Brief Description	Status
PRO	Carry-On Trailer Corporation, Northumberland County (manufacturer)	Alleged construction and operation of a major source of HAP emissions w/o obtaining a permit; failure to submit Title V permit application w/in 12 months of start-up	NOV issued 6/18/02; Consent Order dated 3/26/04 imposed a civil fine of $35,000 and SEP requiring the installation and operation of a regenerative thermal oxidizer to reduce VOC emissions
PRO	Chaparral Steel Co., Dinwiddie County (specialty steel manufacturer)	Alleged by-passing of pollution control device (after-burner) with resulting exceedances of NOx and CO emissions limits; exceedance of mercury emission limit	NOV issued 3/24/03; Consent Order dated 1/13/04 imposed a civil fine of $137,500 and continuous emissions monitors for CO and NOx
TRO	Commonwealth Chesapeake Co. LLC, Accomack County (electric generating station)	Alleged violation of Title V permit by submitting semi-annual monitoring report for the period covering 5/2/03 through 6/30/03 180 days late	NOV issued 3/10/04; Consent Order dated 5/6/04 imposed civil fine of $1,490

** Table B includes HPV cases resolved by Consent Order during the second quarter of 2004 where the alleged violator has complied with substantially all of the terms of the Consent Order.

Report on Air Quality Program Activities: Below is a summary of the significant activities related to the Air Quality Program.

CURRENT 1-HOUR OZONE AIR QUALITY STANDARD: On July 18, 1997 (62 FR 38856), U.S. Environmental Protection Agency (EPA) issued a regulation replacing the 1-hour 0.12 parts per million (ppm) ozone national ambient air quality standard (NAAQS) with an 8-hour standard at a level of 0.08 ppm. The issue of how long and to what extent to retain the 1-hour ozone NAAQS has been subject to numerous rulemakings and settlements over the years. On April 30, 2004 (69 FR 23951), part one of EPA's final rule for implementing the 8-hour ozone standard was published in the Federal Register. Part one covers two key implementation issues: classifying areas for the 8-hour standard and transitioning from the 1-hour to the 8-hour standard, which includes revocation of the 1-hour standard and the anti-backsliding principles that should apply upon revocation. EPA will revoke the 1-hour standard in full, including the associated designations and classifications, one year following the effective date of the 8-hour ozone designations (June 15, 2005). However, EPA maintains that its rule preserves control obligations mandated by subpart 2 for an area's classification for the 1-hour standard, though a state may revoke or modify discretionary measures in a SIP so long as it demonstrates that such removal or modification will not interfere with attainment of or progress toward the 8-hour ozone standard (or any other applicable requirement of the Act). States with unmet 1-hour ozone attainment demonstration obligations have three options for meeting this obligation. Areas will not be obligated to continue to demonstrate conformity for the 1-hour NAAQS as of the effective date of the revocation of the 1-hour NAAQS. EPA will no longer make findings of failure to attain the 1-hour standard and, therefore, 1) EPA will not reclassify areas to a higher classification for the 1-hour standard based on such a finding and 2) areas that were classified as severe for the 1-hour NAAQS are not obligated to impose fees as provided under sections 181(b)(4) and 185A of the Clean Air Act (CAA). (These antibacksliding provisions and others are covered in section 51.905 of the final rule.) In the interim, planning requirements must be addressed by states with 1-hour ozone attainment issues.

On August 15, 2002, the Sierra Club notified the state and EPA of its intent to commence a civil action against Virginia officials for failure to implement the original maintenance plan for the Richmond area approved by EPA in a SIP revision on November 17, 1997. They state that the maintenance plan--in particular, the contingency measures (including I/M) found in the maintenance plan to be implemented in the event of ozone

violations in the area-- was not carried out according to schedule. States are allowed by the Clean Air Act to revise their SIPs and maintenance plans in order to more expeditiously attain the ozone standard. As discussed in the previous paragraph, the plan was revised to replace the I/M program with more effective measures because it would have imposed considerable expense with negligible air quality improvement. On October 7, 2002 (67 FR 62427), EPA issued a notice proposing to approve Virginia's maintenance plan for the Richmond area.

The pre-existing air quality contingency measures will also be triggered for the Hampton Roads Ozone Nonattainment Area, which is legally in attainment with the older ozone standard, but has violated it based on 1999-2001 data. By letter of October 29, 2001, EPA officially notified the Commonwealth of the violation and the need to implement the contingency measures. However, as was the case with the Richmond area, changes will be needed before this is done.

Meanwhile, EPA had approved plans and control strategies to achieve the 1-hour standard in the Northern Virginia area. However, on July 2, 2002, the U.S. Court of Appeals for the DC circuit overturned EPA's approval of the SIP revisions (Virginia, along with Maryland and the District) submitted for the Washington DC metropolitan area, which extended the area's attainment deadline for ozone from 1999 to 2005. The court found that EPA lacked the authority to grant an extension of the attainment deadline from 1999 to 2005 without reclassifying the area as a severe nonattainment area. Although EPA had argued that it could extend the attainment deadline because of the impact of upwind emissions impeding the area's ability to attain the standard, the court responded that the Clean Air Act details the conditions under which EPA may extend an attainment deadline due to transport, and none of these conditions applied in this case. The court also directed EPA to determine which measures, if any, are reasonably available control measures (RACM) to be implemented by the states, as EPA's failure to analyze whether particular measures constituted RACM was arbitrary and capricious. Additionally, the court held the EPA had no authority to approve the SIPs when they failed to include a rate of progress plan for the years after 1999, as the Clean Air Act makes inclusion of such a plan a requirement for approving a revised SIP. Finally, the court held that since the SIPs did not meet the Clean Air Act requirement to include contingency measures, then EPA did not have the authority to approve the SIPs. The court thus vacated EPA's approval of the SIPs, and remanded the matter to EPA for further consideration.

On December 27, 2002 (67 FR 79460), EPA issued notice of a proposal to stay the authority to revoke the 1-hour ozone standard until the 8-hour ozone implementation rulemaking. EPA is proposing to stay its authority under 40 CFR. 50.9(b) to determine that an area has met the 1- hour ozone standard and that the 1-hour standard no longer applies, until it conducts a subsequent rulemaking addressing whether it should modify the second sentence of 40 CFR 50.9(b). (The second sentence provides that, after the 8-hour ozone standard has become fully enforceable and no longer subject to further legal challenge, the 1-hour ozone standard will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard.) EPA plans to consider the timeframe and basis for revoking the 1-hour standard as part of its upcoming rulemaking dealing with implementation of the 8-hour ozone standard.

On January 24, 2003 (68 FR 3410), EPA published a final rule which included a determination that the Metropolitan Washington, D.C. serious ozone nonattainment area (D.C. area) did not attain the 1-hour ozone ambient air quality standard by the November 15, 1999 CAA deadline for serious ozone nonattainment areas. As a result, the D.C. area is reclassified by operation of law as a severe ozone nonattainment area on the effective date of this rule (March 25, 2003). EPA took this action in response to a ruling by the U.S. Court of Appeals for the District of Columbia Circuit that vacated EPA’s decision to give the area five more years to attain the 1-hour ozone standard without changing the area’s classification.

On April 17, 2003 (68 FR 19106), EPA published a final rule granting conditional approval of the D.C. area one-hour ozone SIP. The conditional approval included the following requirement, codified as 40 CFR 52.2450(b):

> (b) Virginia's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996-1999 portion of the rate-of-progress plan submitted on December 19, 1997 and May 25, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 29, 1998, August 18, 1998, February 9, 2000, and section 9.1.1.2 of the March 22, 2000 submittal and the transportation control measures in

Appendix J of the February 9, 2000 submittal, is conditionally approved contingent on Virginia submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. Virginia must submit a revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996-1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999-2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the rate-of-progress requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

In the preamble (68 FR 19129) to the April 17 notice, EPA included the following statement:

> Should the Washington area jurisdictions fail to fulfill these conditions by May 19, 2003 (later changed to April 17, 2004 at 68 FR 26495, May 16, 2003), this conditional approval will convert to a disapproval pursuant to CAA section 110(k).

Prior to the April 17 notice, the Commonwealth made a formal commitment by letter of April 8, 2003 to implement the requirements specified by the conditional approval as discussed above.

On June 23, 2003, the Sierra Club re-filed its lawsuit challenging EPA's acceptance of the Washington, D.C., area's plan to reduce ozone. The suit, Sierra Club v. U.S. EPA, is specifically challenging EPA's ability to grant "conditional approval" to a plan that a federal appeals court already declared unlawful. If the court agrees with the environmentalists, the D.C. area would lose millions of federal highway dollars and potentially lose its authority to run key parts of its clean air program. The legal brief to the U.S. Court of Appeals for the D.C. Circuit says "In [the original case referred to as] Sierra Club I, this court expressly held that EPA could not lawfully approve the ozone plans for the Washington area because those plans lacked [required additional pollution reduction measures]," and goes on to say "In the action challenged here, EPA has once again approved the very same plans that this court held the agency could not approve in Sierra Club I. The plans have not changed in any material respect." The brief also alleges that EPA cannot "circumvent the express rulings of Sierra Club I via the artifice of 'conditional' approval. . . . The effect of conditional approval is the same as full approval -- namely, to forestall the commencement of clocks for imposition of sanctions and federal plans that disapproval would require."

On June 26, 2003 (68 FR 38160), EPA issued a final rule staying its authority to determine that the 1-hour ozone national ambient air quality standard (NAAQS) no longer applies to an area that attains the NAAQS. EPA is addressing how it will revoke the 1-hour ozone NAAQS in its proposed rule for implementing the 8-hour ozone NAAQS (see 68 Federal Register 32802 (June 2, 2003)). The stay will remain effective until EPA takes final action revising or reinstating its authority to remove the 1-hour ozone NAAQS. The rule is effective August 25, 2003.

On February 3, 2004, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision in Sierra Club v. EPA that overturned EPA's approval of an air quality plan for the Washington, D.C., metropolitan area but rejected most of the challenges to the plan's key elements. The court ruled against EPA's use of "conditional approval," a legal tool that would have allowed the region to submit a plan that omitted some of its required elements based on a promise to submit them later. This vacated EPA's April 17, 2003 notice (see above).

While rejecting this aspect of the plan, the court also dismissed challenges to other major parts of it. The court upheld EPA's use of a method for modeling the region's ability to come into attainment, known as the "weight-of-evidence" approach, in lieu of a specific methodology known as photochemical grid modeling. The court ruled that EPA had the discretion to use this other modeling approach.

The court also rejected challengers' argument that EPA should have imposed earlier deadlines for submitting a new SIP when it reclassified the region from a "serious" to a "severe" nonattainment area in January 2003. The challengers argued that EPA unlawfully extended the deadline for submitting a new SIP until March 2004. However, the court said that to rule in the challengers' favor would have retroactively imposed deadlines that occurred before the region was reclassified.

As a result of the court decision, the region was then required to submit a new SIP by the March 1 deadline in order to meet the new requirements for a "severe" nonattainment area, while also including additional requirements that should have been included in the previous SIP if the region had not been granted conditional approval. The required submittal was made on February 25, 2003.

On August 19, 2003, the Commonwealth submitted (i) a plan demonstrating rate of progress for 2002 and 2005; (ii) a revision to 1990 base year emissions; and (iii) a severe area attainment demonstration for the Washington DC-MD-VA Ozone Nonattainment Area.

8-HOUR OZONE STANDARD - DESIGNATION OF NONATTAINMENT AREAS: On July 18, 1997 (62 FR 38856), U.S. Environmental Protection Agency (EPA) issued a regulation replacing the 1-hour 0.12 parts per million (ppm) ozone national ambient air quality standard (NAAQS) with an 8-hour standard at a level of 0.08 ppm. An area's compliance with the 8-hour standard is measured by the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard became effective on September 16, 1997.

On July 26, 2002 (67 FR 48896), EPA published a notice of a proposed settlement agreement between the Department of Justice and environmental groups affecting how EPA will implement the transition from the 1-hour ozone standard to the 8-hour ozone standard. The settlement requires EPA to issue a notice of proposed rulemaking stating that it will stay its authority to determine that an area has met the 1-hour ozone standard, which under 40 CFR 50.9(b) would mean the 1-hour ozone standard would no longer apply to that area (assuming the 8-hour standard has become fully enforceable and is not subject to any further legal challenge). Instead, the settlement provides that EPA will propose that the stay be effective until EPA takes final agency action on a subsequent rulemaking addressing whether EPA should modify this provision (on the applicability of the 1-hour standard after the 8-hour standard has become fully enforceable), given the Supreme Court's decision of February 27, 2001 regarding implementation of the 8-hour standard. Furthermore, EPA agreed in the settlement that in this subsequent rulemaking, EPA will state that it will consider and address any comments concerning (a) which, if any, implementation activities for an 8-hour standard would need to occur before EPA determines that the 1-hour standard no longer applies to an area, and (b) the effect of revising the ozone NAAQS on existing ozone designations. The environmental groups agreed to dismiss their lawsuit if EPA meets the terms of the settlement agreement.

On December 23, 2002, EPA issued its final response to a May 1999 court remand of the 8-hour ozone standard, reaffirming the 8-hour standard the agency issued in 1997. EPA decided to reaffirm the standard after carefully considering the scientific and technical information available when the 1997 standard was issued, in addition to public comments on the November 2001 proposed response to the remand. The U.S. Court of Appeals for the District of Columbia ordered EPA in May 1999 to reconsider the standard, taking into account the possible beneficial effects of ground-level ozone on UVB radiation. EPA concluded that information about such possible beneficial effects is too uncertain to allow for credible estimates, and any beneficial effects are likely to be small from a public health perspective; thus relaxation of the 8-hour ozone standard is not warranted. The response was effective 60 days after it was published in the Federal Register.

On December 24, 2002, nine environmental and health groups sent a letter to EPA indicating their intent to sue the agency for not revising the ozone and particulate matter national ambient air quality standards (NAAQS). The groups contend that the Clean Air Act clearly intends that the science and the NAAQS be reviewed on a regular, five-year basis to ensure the protection of public health. EPA last completed such a review of the science in 1996, and last reviewed the standards themselves in 1997, when the ozone and fine particle standards were strengthened. In their letter, the American Lung Association, Environmental Defense, the Natural Resources Defense Council, the Sierra Club, the Alabama Environmental Council, the Clean Air Council, the Michigan Environmental Council, the Ohio Environmental Council and the Southern Alliance for Clean Energy give EPA 60 days notice of their intent to sue.

On January 7, 2003, it was reported that thirty-four areas (including two in Virginia) submitted voluntary 8-hour ozone ("early action") compacts to EPA by the December 31, 2002 deadline set by EPA. The purpose of an early action compact is to provide a local area with flexibility to control air emissions from its sources and offer a means to achieve cleaner air faster than would otherwise be required under the Clean Air Act. Areas that approach or monitor exceedances of the 8-hour ozone standard but are designated attainment for the 1-hour ozone standard were eligible to submit compacts, which must contain enforceable measures and milestones and schedules established by EPA. In exchange, EPA agreed to defer the effective date of a nonattainment designation as long as all the terms and the milestones in the compacts are met.

On February 27, 2003, EPA agreed to give states a 3-month extension, until July 15, 2003, to submit their updated, revised or new recommendations for 8-hour ozone designations. Initially, EPA required that states submit this information by April 15, 2003. The states requested that the deadline be extended because EPA's proposed implementation rule for the 8-hour ozone standard was not scheduled for release until March 15, 2003,

and states needed time to review the rule and explain its implications to stakeholders in nonattainment areas. To ensure that EPA meets a consent decree deadline of April 15, 2004 for promulgating designations, EPA is requesting states' cooperation. EPA asks that states submit their recommendations both electronically and in hard copy form to the regional administrator and regional air director. EPA is also requesting that, as part of their recommendations, states submit the specific boundaries for their proposed nonattainment areas, supporting air quality data and any other documentation supporting their proposal, including an assessment of the factors identified in EPA's earlier guidance. EPA is also asking for states' cooperation to ensure submission of quality-assured, certified 2003 data to EPA's Air Quality System no later than 30 days after the close of the 2003 ozone monitoring season. States will also be provided an opportunity to update their recommendations after the final implementation rule is released.

On May 14, 2003, EPA released its proposed implementation rule for the 8-hour ozone standard, which would establish guidelines for state and tribal authorities to implement the 8-hour National Ambient Air Quality Standard for ozone enacted by EPA in 1997. The proposal seeks public comment on options for planning and control requirements for states and tribes, as well as for making the transition from the 1-hour ozone standard to the 8-hour standard. In particular, EPA proposes two options for classifying nonattainment areas. One option would place all nonattainment areas under Subpart 2 of Part D of the Clean Air Act, which contains detailed and prescriptive requirements for areas depending on the severity of their violation of the 8-hour ozone level. EPA's other classification option – and its preferred one – would generally place areas that are nonattainment only for the 8-hour standard, and not the 1-hour standard, under Subpart 1, with other areas subject to Subpart 2. Subpart 1 contains more flexible requirements for nonattainment areas. The Supreme Court in 2001 held that EPA could not ignore Subpart 2 completely in implementing the 8-hour ozone standard and remanded EPA's original implementation scheme to the agency to reasonably resolve the ambiguity in the Clean Air Act concerning the manner in which Subpart 1 and Subpart 2 interact with regard to revised ozone standards.

On May 19, 2003, EPA filed a consent decree setting out a schedule for reviewing the ozone National Ambient Air Quality Standard (NAAQS) to settle a lawsuit brought by a coalition of environmental and health groups. EPA agreed to issue its final criteria document by December 20, 2004, publish a proposed rule in the Federal Register by April 10, 2006 and issue a final rule in the Federal Register by December 30, 2006. The groups had filed a lawsuit alleging that the EPA Administrator had failed to meet the Clean Air Act deadlines for reviewing the ozone standard. The Act requires EPA to conduct a thorough review of NAAQS and make revisions as appropriate every five years. EPA issued revised criteria for ozone in 1996 and revised the standard in 1997. The proposed settlement was filed in U.S. District Court for the District of Columbia.

On June 2, 2003, EPA issued notice of a proposal for implementing the new 8-hour ozone standard. EPA did not include regulatory text in the proposal because a number of options are being proposed for many of the implementation elements, and the agency believed it to be preferable to first obtain public comment on the conceptual options. After consideration of the public comment on the proposed options, the agency issued the proposed regulatory text (see below).

On July 9, 2003, the Commonwealth made a submittal for the 8-hour ozone designations in which it confirmed the designation of the localities recommended in its July 2000 submittal. Subsequently, EPA will determine the final designations. Under a consent decree (see above), EPA must meet a deadline of April 15, 2004 for promulgating the final designations.

On August 6, 2003 (68 FR 46536), EPA released the draft regulatory text for its proposal to implement the 8-hour ozone standard. On June 2, 2003, EPA published a proposal outlining various options for each element or feature of implementation. In the newly released draft regulatory text, the agency provides language for only one of the options proposed for each feature or element, to demonstrate how the regulatory text would appear for that particular option. In the preamble to the draft regulatory text, EPA says that selection of a particular option was generally based on the preferences stated in the June 2, 2003 proposal and should not be interpreted as a decision by EPA to proceed with that option in final rulemaking. In this draft regulatory text, EPA did not address the options concerning New Source Review (i.e., the transitional program and the Clean Air Development Communities program).

On December 3, 2003, EPA notified the Governor of EPA's proposed intentions regarding the designation of areas in Virginia under the 8-hour ozone air quality standard.

On February 10, 2004, the Commonwealth submitted its final recommendations and comments on the designations of areas in Virginia under the 8-hour ozone air quality standard. On April 30, 2004 (69 FR 23858), EPA's nonattainment and attainment/unclassifiable designations for the 8-hour ozone standards were published in the Federal Register, along with area classifications. The designations will be effective June 15, 2004 (except for early action compact areas). Below is a comparison EPA's final designations and Virginia's recommendations.

Area	Commonwealth's 2/10/04 proposal	EPA's 4/30/04 response/classification
Northern Virginia	Same as previous 1-hour nonattainment area; transfer Stafford County to Fredericksburg.	No change/moderate.
Richmond	Same as previous 1-hour nonattainment area.	Add all of Charles City County, City of Petersburg and Prince George County/moderate.
Hampton Roads	Same as previous 1-hour nonattainment area.	Add Gloucester and Isle of Wight Counties/marginal.
Fredericksburg	Establish area separate from Northern Virginia but with same classification; transfer Stafford County from Northern.	No change/moderate.
Caroline County	New nonattainment area.	Denied.
Roanoke	New nonattainment area; designation deferred by EAC.	No change/basic.
Frederick County/ Winchester	New nonattainment area; designation deferred by EAC.	No change/basic.
Shenandoah National Park	Portion of park within Madison and Page Counties.	No change/basic.

On April 30, 2004 (69 FR 23951), part one of EPA's final rule for implementing the 8-hour ozone standard was published in the Federal Register. Part one covers two key implementation issues: classifying areas for the 8-hour standard and transitioning from the 1-hour to the 8-hour standard, which includes revocation of the 1-hour standard and the anti-backsliding principles that should apply upon revocation. As expected, EPA selected its preferred method for classifying nonattainment areas: each area with a 1-hour design value at or above 0.121 parts per million (the lowest 1-hour design value in Table 1 of subpart 2) will be classified under subpart 2 based on its 8-hour design value; all other areas will be covered under subpart 1 using their 8-hour design values. EPA will revoke the 1-hour standard in full, including the associated designations and classifications, one year following the effective date of the 8-hour ozone designations (June 15, 2005). However, EPA maintains that its rule preserves control obligations mandated by subpart 2 for an area's classification for the 1-hour standard, though a state may revoke or modify discretionary measures in a SIP so long as it demonstrates that such removal or modification will not interfere with attainment of or progress toward the 8-hour ozone standard (or any other applicable requirement of the Act). States with unmet 1-hour ozone attainment demonstration obligations have three options for meeting this obligation. Areas will not be obligated to continue to demonstrate conformity for the 1-hour NAAQS as of the effective date of the revocation of the 1-hour NAAQS. EPA will no longer make findings of failure to attain the 1-hour standard and, therefore, 1) EPA will not reclassify areas to a higher classification for the 1-hour standard based on such a finding and 2) areas that were classified as severe for the 1-hour NAAQS are not obligated to impose fees as provided under sections 181(b)(4) and 185A of the Clean Air Act (CAA). (These antibacksliding provisions and others are covered in section 51.905 of the final rule.) The rule also covers attainment dates. For areas subject to subpart 2, the maximum period for attainment will run from the effective date of designations and classifications for the 8-hour standard and will be the same periods as provided in Table 1 of section 181(a) of the CAA. For areas subject to subpart 1 of the CAA, the period for attainment will be no later than five years after the effective date of the designation, with a five-year extension possible. The rule is effective June 15, 2004.

On July 12, 2004, the Commonwealth submitted a request to reclassify the Richmond Ozone Nonattainment Area from moderate to marginal. EPA is required to make a final decision by September 15, 2004. Approval by EPA would remove the need to implement some control measures such as a basic motor vehicle emissions inspection and maintenance program. Section 181 (a) (4) of the federal Clean Air Act provides that an ozone nonattainment area may be reclassified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which the classification was based.

FINE PARTICLES ($PM_{2.5}$) STANDARD - DESIGNATION OF NONATTAINMENT AREAS: On April 1, 2003, EPA issued guidance to states on the process for designating areas for the purpose of implementing the fine particle national ambient air quality standards. The guidance describes the process for developing state recommendations on designations and the timeline for EPA action leading to the final designations. EPA plans to issue final designations on December 15, 2004.

On July 18, 1997 (62 FR 38652), EPA promulgated the air quality standards for fine particulate matter (known as $PM_{2.5}$) . The standards were based on a number of health studies showing that increased exposure to $PM_{2.5}$ is correlated with increased mortality and a range of serious health effects, including aggravation of lung disease, asthma, and heart problems. Estimates show that attainment of these standards would result in tens of thousands fewer premature deaths each year and would prevent tens of thousands of hospital admissions and millions of work absences and respiratory illnesses in children annually. The designation process for $PM_{2.5}$ is the next step toward developing and implementing emission control programs that will address this important public health problem.

The first step in the designation process is the submittal of state recommendations. EPA requests that states provide a list of recommended designations to EPA by February 15, 2004. EPA plans to announce its intended designations in July 2004 and will provide 120 days for states to comment on any modifications that EPA makes to the recommended designations. EPA plans to publish final $PM_{2.5}$ designations for all areas on December 15, 2004. EPA also intends to propose and finalize its implementation rule for $PM_{2.5}$ early enough to be taken into consideration during the designation process. EPA hopes that by following a designation schedule for $PM_{2.5}$ similar to that for the 8-hour ozone program, the states will be able to harmonize area boundaries and future control strategies to the extent possible.

As explained in the guidance, EPA intends to apply a presumption that the boundaries for urban nonattainment areas should be based on metropolitan area boundaries. A metropolitan area, as defined by the Office of Management and Budget, may consist of a single Metropolitan Statistical Area in some cases, and a Consolidated Metropolitan Statistical Area in other cases. These metropolitan areas provide presumptive boundaries for the geographic extent of urban areas. The presumptive use of metropolitan area boundaries to define urban nonattainment areas is based on recent evidence that violations of the $PM_{2.5}$ air quality standards generally include a significant urban-scale contribution as well as a significant larger-scale regional contribution. For rural areas that are identified as violating the $PM_{2.5}$ standards, the guidance sets forth EPA's presumption that the full county should be designated nonattainment. The approach taken in this guidance is similar to our approach to designations for the 8-hour ozone standard, and EPA urges states harmonize their ozone and $PM_{2.5}$ designation recommendations where appropriate.

The guidance provides EPA's current views on how boundaries should be determined for designations. This guidance is not binding on states, the public, or EPA. Issues concerning nonattainment area boundaries will be addressed in actions to designate nonattainment and attainment/unclassifiable areas under sections 107 and 301(d) of the Clean Air Act. When EPA promulgates designations, that action will be final and binding on states, the public, and EPA as a matter of law.

On May 19, 2003, EPA filed a consent decree setting out a schedule for reviewing the particulate matter (PM) National Ambient Air Quality Standard (NAAQS) to settle a lawsuit brought by a coalition of environmental and health groups. EPA agreed to issue its final criteria document by December 19, 2003, publish a proposed rule (including review of PM standards, any revisions and any new standards) in the Federal Register by April 10, 2005 and publish a final rule in the Federal Register by December 30, 2005. The groups had filed a lawsuit alleging that the EPA Administrator had failed to meet the Clean Air Act deadlines for reviewing the PM standard. The Act requires EPA to conduct a thorough review of NAAQS and make revisions as appropriate

every five years. EPA issued revised criteria for PM in 1996 and revised the standard in 1997. The proposed settlement was filed in U.S. District Court for the District of Columbia.

On February 13, 2004, the Commonwealth submitted its initial recommendations on the designations of areas in Virginia under the fine particulate matter ($PM_{2.5}$) air quality standards. This was submitted in response to the request and schedule set forth in the EPA designation guidance memorandum dated April 1, 2003.

The letter explained that based on the most recent three years of fine particulate matter monitoring data from 2001 to 2003, all monitors within the Commonwealth of Virginia are currently measuring $PM_{2.5}$ concentrations that are in compliance with the standards. It went on to say that no short-term (24-hour) exceedances of the standard have ever been recorded in the Commonwealth. Based on these monitoring data, the initial recommendation of the Commonwealth is that all areas in Virginia should be designated attainment for the fine particulate matter standards.

On June 29, 2004, EPA notified the Governor of EPA's proposed intentions regarding the designation of areas in Virginia under the $PM_{2.5}$ air quality standard. Despite any violations of the $PM_{2.5}$ air quality standard in the Commonwealth, EPA proposes to designate 9 localities (Arlington County, Alexandria City, Fairfax County, Fairfax City, Falls Church City, Loudoun County, Manassas City, Manassas Park City, Prince William County) in Northern Virginia area as nonattainment, alleging that the emissions from these localities contribute to nonattainment conditions in the Maryland and Washington D. C. areas.

NO_X SIP CALL: Many areas within the eastern half of the United States petitioned EPA regarding their inability to achieve the ozone standard due to significant amounts of ozone and oxides of nitrogen (NO_X), a precursor to ozone, being transported across state boundaries. EPA made a determination (Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; 63 FR 57491, October 27, 1998, as amended at 63 FR 71225, December 24, 1998; 64 FR 26305, May 14, 1999; and 65 FR 11230, March 2, 2000) that sources in 22 states and the District of Columbia emitted NO_X in amounts that significantly contribute to nonattainment of the ozone NAAQS in one or more downwind states. EPA also required that each of the affected upwind jurisdictions (sometimes referred to as upwind states) submit SIP revisions prohibiting those amounts of NO_X emissions which significantly contribute to downwind air quality problems. Virginia was included as one of the upwind states.

The rulemaking, known as the NOX SIP Call Rule (40 CFR 51.121), also includes statewide NO_X emissions budget levels that each state must achieve by the year 2007. Furthermore, the NO_X SIP Call Rule identifies specific source categories that are covered by the budget; these include electric generating units (EGUs) with a nameplate capacity greater than 25 MWe and non-electric generating units (non-EGUs) above 250 mmBtu. Failure to achieve the budget will result in a Federal Implementation Plan (FIP) which EPA has promulgated as 40 CFR Part 97 (65 FR 2727, January 18, 2000).

The NO_X SIP Call Rule identifies Virginia, along with other states and the District of Columbia, as having substantially inadequate SIPs to comply with requirements of the Clean Air Act that address interstate transport of nitrogen oxides in amounts that will contribute significantly to nonattainment in one or more other States with respect to the ozone national ambient air quality standard. It mandates that, for each jurisdiction identified, a SIP revision must be submitted to EPA that imposes enforceable mechanisms to assure that, collectively, all sources identified in the budget will not exceed the NO_X emissions projected for the year 2007 ozone season. The SIP revisions must include control measures to limit the amount of NO_X so that the jurisdiction's budget is not exceeded. The control measures must be implemented no later than May 1, 2003 (later adjusted by the United States Court of Appeals for the District of Columbia Circuit to May 31, 2004). Emission reductions used to demonstrate compliance with the revision must occur during the ozone season. The revision must include a description of enforcement methods including monitoring compliance with each selected control measure and procedures for handling violations. For large electric generators and industrial boilers, the control measures must include a NO_X mass emissions cap on each source, and impose a NO_X emission rate so that the State can comply with the 2007 ozone NO_X budget.

The NO_X SIP Call Rule permits the states to include a budget trading program as an option in their SIP revisions. The use of this type of program is allowed under 40 CFR 51.121(p), and EPA provides a model NO_X

budget trading rule (hereafter called the EPA Model Rule) in 40 CFR Part 96 (63 FR 57514, October 27, 1998) of the NO_X SIP Call Rule. In fact, EPA encourages states to use the EPA Model Rule and if the state chooses this approach the state's SIP revision will be automatically approved according to 40 CFR 51.121(p).

The original NO_X SIP Call rule had a SIP submittal deadline of September 30, 1999, but this was later changed to October 30, 2000 to accommodate the delay caused by the litigation.

On November 8, 2000, the State Air Pollution Control Board approved 9 VAC 5 Chapter 140 (hereafter called the proposed regulation) and authorized it for release to seek public comment. On July 16, 2001, the Department issued a notice seeking comment on the proposed regulation. A public hearing was held August 22, 2001 and the comment period closed September 14, 2001. Action by the Board on the final regulation was expected at the January 2002 meeting but was delayed until the February 27, 2002 meeting at the request of the Governor's Office. Final action was taken on the regulation at the February 27 meeting but publication of the final regulation in the Virginia Register on March 25, 2002 was accompanied by a notice of suspension and reopening for public comment. This action was taken due to the substantive differences between the proposed regulation and the final. The second comment period closed on April 24, 2002 and the Board approved the final regulation at its May 21, 2002 meeting.

On June 25, 2002, the regulation was submitted to EPA as Virginia's response to the NO_X SIP Call, along with the initial allocations for the affected units. On July 23, 2002 (67 FR 48032), EPA issued a notice determining the submittal to be administratively complete.

On July 8, 2003 (68 FR 40520), EPA issued a notice to grant conditional approval of Virginia's NO_X budget trading program, with the exception of its NO_X allowance banking provisions. According to EPA, the program does not meet federal requirements with regard to the start date for flow control. The current Virginia program regulation uses 2006 as the start date, and EPA indicated that Virginia must revise its regulation at 9 VAC-140-550 to establish the year 2005 as the start of flow control.

On November 5, 2003, the Board adopted a revision to 9 VAC-140-550 to establish the year 2005 as the start of flow control. It appeared in the Virginia Register on February 23, 2003 and became effective on March 24, 2004. The revised regulation was submitted to EPA on June 23, 2004.

On August 25, 2004 (69 FR 52174), EPA issued a notice to grant full approval of Virginia's NO_X budget trading program, by approving the revision to 9 VAC-140-550 to establish the year 2005 as the start of flow control.

The state budget bill includes a provision to enable the auctioning of NOx emission credits. Subsection D of Item 383 of Chapter 1042 of the 2003 Acts of Assembly indicates that the Department of Environmental Quality may auction the NOx emissions credits allocated under the NOx SIP Call as set asides for new sources. On December 8, 2003, the Board adopted 9 VAC-140-421 to establish the process for auctioning the new source set-aside for the years 2004 and 2005. The regulation was adopted using the emergency procedures of the Administrative Process Act and became effective on January 12, 2004. The auction was held on June 24, 2004. The emergency regulation expired on July 1, 2004 and starting with year 2006, distribution of set-aside is limited to newly permitted Virginia industries on a pro-rata basis as provided by the currently effective regulation.

On April 21, 2004 (69 FR 21604), EPA published the Phase II requirements of the NOx SIP Call; the requirements take effect June 21, 2004. In this rulemaking, EPA 1) finalizes the definition of electric generating unit as applied to certain small cogeneration units, 2) establishes control levels for stationary internal combustion engines, 3) excludes portions of Georgia, Missouri, Alabama and Michigan from the NOx SIP Call, 4) revises statewide emissions budgets in the NOx SIP Call to reflect the disposition of the first three issues above, 5) sets a SIP submittal date, 6) sets the compliance date for implementation of control measures and 7) excludes Wisconsin from NOx SIP Call requirements. It requires states that submitted SIPs to meet the Phase I NOx SIP Call budgets to submit Phase II SIP revisions as needed to achieve the necessary incremental reductions of NOx. It also requires Georgia and Missouri to submit SIP revisions meeting the full NOx SIP Call budgets, since they were not required to submit Phase I SIPs. Sources in Alabama and Michigan will implement Phase II for the portion of the states covered by the NOx SIP Call. All Phase II sources have a compliance date of May 1, 2007, and SIPs will be due from all affected states in 2005. Under the NOx SIP Call, EPA determined

that sources in 22 states and the District of Columbia were emitting NOx in amounts that significantly contribute to nonattainment of the 1-hour ozone standard in downwind states and set forth requirements for each of the affected upwind states to submit SIP revisions prohibiting those amounts of NOx emissions that significantly contribute to downwind air quality problems.

SECTION 126 PETITIONS: On March 18, 2004, North Carolina filed a petition with EPA under Clean Air Act section 126 seeking relief from air pollution from 13 states that it claims is contributing significantly to nonattainment, or interfering with maintenance, of the National Ambient Air Quality Standards (NAAQS) in North Carolina. The 13 states are Alabama, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia. The petition alleges that NOx and SO_2 emissions from electric generating units in these 13 states are preventing North Carolina from meeting the NAAQS for $PM_{2.5}$ and ozone. The petition says that compliance with the proposed EGU emission budgets in EPA's proposed Interstate Air Quality Rule (IAQR) "would satisfy the requirements of this petition" and that North Carolina "does not oppose the flexibility discussed by EPA [in the IAQR proposal] to allow equivalent reductions from other source categories in a given state . . . so long as those reductions are real and enforceable." However, North Carolina is concerned that the interstate trading regime proposed in the IAQR might deny the state the benefit of needed reductions in states whose emissions particularly affect North Carolina's quality. In addition, section 110 (under which the IAQR is being promulgated) and section 126 do not provide mutually exclusive remedies; North Carolina believes its section 126 petition will assist in assuring expeditious implementation of controls on interstate transport affecting North Carolina. Section 126(b) of the Clean Air Act states that, within 60 days after receiving a section 126 petition, EPA must make a finding of violation of the Act's "significant contribution" provision or deny the petition. Section 307(d)(10) authorizes EPA to extend this period.

On May 19, 2004, EPA announced that it is extending by six months its final action on a petition from North Carolina filed under section 126 of the Clean Air Act. In the petition, North Carolina requests that EPA make a finding that emissions of sulfur dioxide and nitrogen oxides from large electric generating units in 13 states are contributing significantly to fine particulate matter and/or 8-hour ozone nonattainment and maintenance problems in North Carolina. EPA is delaying its response because it has determined that the 60-day time limit provided under section 126(b) is not sufficient for the agency to develop an adequate proposal on whether the sources identified in the petition contribute significantly to nonattainment problems downwind and, further, to allow public input regarding the promulgation of any controls to mitigate or eliminate those contributions. Citing authority under Clean Air Act section 307(d)(10), EPA will extend to November 18, 2004 the deadline for its response to North Carolina's petition.

International Paper Innovations Project - Status Report: The Department and officials from International Paper located in Franklin, Virginia will brief the Board on the status of the International Paper Innovations Project. The briefing will include some preliminary information concerning a variance that will be needed to implement the project. Request for action by the Board on the variance will be presented at the November 2004 meeting.