TENTATIVE AGENDA
STATE AIR POLLUTION CONTROL BOARD MEETING

THURSDAY, SEPTEMBER 3, 2009

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

Convene – 9:30 a.m.

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I.	**Minutes (**April 24, 2009)		A
II.	**Future Meetings/Agenda Development**		
III.	**Regulations – Final Exempt Actions**		
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VII.	**Public Forum**		
VIII.	**Other Business**		
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	§110(a)(2)(d) of the Clean Air Act		
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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 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: cmberndt@deq.virginia.gov.

Permit Actions Before the Board (Part I of 9VAC5 Chapter 80, Rev. F09) - Request for Board Action on Exempt Final Regulation: General public participation requirements for permit applications are found in Part I of 9VAC5 Chapter 80 (Permits for Stationary Sources). It allows for either the director or a majority of board members to request a meeting of the board regarding direct consideration of a permit by the board in order to review the decision and determine whether or not to grant board consideration, or to delegate the permit to the director. If such a meeting is held electronically, the board must have at least one forum open to the public, and individual board members may participate from any location regardless of whether it is open

to the public. Chapter 627, 2009 Acts of the Assembly, has revised the provision requiring at least one forum to be open to the public and allowing individual board members to participate from any location in order to make it consistent with § 2.2-3708 of the Virginia Freedom of Information Act. The department is requesting approval of draft final regulation amendments that meet state statutory requirements. Approval of the amendments will ensure that the stationary source permit program will be in compliance with the Code of Virginia.

Because the state regulation is necessary to conform to Virginia statutory law or the appropriation act where no agency discretion is involved, the state regulation is exempt from the standard regulatory process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 a 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. 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.

The following is a brief summary of the substantive amendment the department is recommending be made to the regulation:

1. 9VAC5-80-25 D has been revised to indicate that (i) a quorum of the board is not required to be physically assembled at one primary or central meeting location; (ii) discussion is limited to review of the director's decision, determination whether or not to grant board consideration, or delegation of the permit to the director for the director's decision; and (iii) no other matter of public business may be discussed during any such electronic meeting. [9VAC5-5-25 E, page 2]

2. 9VAC5-80-35 D has been revised to indicate that (i) a quorum of the board is not required to be physically assembled at one primary or central meeting location; (ii) discussion is limited to review of the director's decision, determination whether or not to grant board consideration, or delegation of the permit to the director for the director's decision; and (iii) no other matter of public business may be discussed during any such electronic meeting. [9VAC5-5-35 E, page 4]

3. 9VAC5-80-35 J has been revised to state that public hearings may be held before one or more board members. [9VAC5-5-35 J, page 5]

Definition of Volatile Organic Compound (9VAC5 Chapter 10, Rev. G09) - Request to Publish Proposal for Public Comment and Use the Fast-track Process: On January 21, 2009 (74 FR 3437), EPA revised the definition of VOC in 40 CFR 51.100 to exclude two substances that have been demonstrated to be less reactive and are therefore not considered to be VOCs: propylene carbonate and dimethyl carbonate. This exclusion is accomplished by adding the substance to a list of substances not considered to be a VOC. This change to the exemption list became effective on February 20, 2009. Excluding propylene carbonate and dimethyl carbonate from the VOC definition may encourage the use of these products in place of products containing more reactive and thereby more polluting substances, ultimately resulting in fewer emissions of VOCs and reduced production of ozone. The department is requesting approval of a proposal for public comment that meets federal statutory and regulatory requirements. Approval of the proposal 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 still 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, 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 15 days after the end of the public comment period.

The list of substances not considered to be VOCs in Virginia has been revised to include propylene carbonate and dimethyl carbonate. [9VAC5-10-20, page 16]

High Priority Violators (Hpv's) For The Second And Third Quarters, 2009

NOV's Issued from January through June 2009.

DEQ Region	Facility	Brief Description	Status
TRO	**Hampton University** Hampton, Virginia Hampton City Registration No. 60106	**Discovery dates** - 12/6/07 - 11/19/08 - 12/29/08 **Alleged violations:** **1st NOV**- During Visible Emission Evaluations DEQ staff noted Opacity values that exceeded the 20 % opacity limit on Stack 1. **2nd NOV** - Facility failed to conduct required stack test within 5 calendar years of the previous test. The last stack test was conducted on 3/15/02. **3rd NOV –** The facility failed to maintain appropriate records (coal shipment certifications and coal analysis for Cl).	**1st NOV** - Issued 1/28/08 **2nd NOV** - Issued 1/5/09 **3rd NOV** - Issued 3/1/09 **CO** *- In Development* **Additional Information:** DEQ is negotiating with the facility to resolve all three NOV's. The facility conducted the required stack test on 3/10/09. Test results were reviewed by DEQ staff and all reported values are within permit limits. The facility provided coal shipment certifications on 6/11/09.

BRRO	**Huber Woods Engineered Woods LLC** Crystal Hill, Virginia Halifax County Registration No. 30905	**Discovery date** - 1/13/09 **Alleged violation:** Failed stack test on Regenerative Thermal Oxidizers (RTO's) for PM and PM10.	**NOV** - Issued 1/23/09 **CO** - Dereferred **Case Closure Date** – 5/27/09 **Additional Information:** During discussions it was determined that the stack test method used was inappropriate. At DEQ's request the facility retested. Retesting was conducted on March 26, 2009. Test results were reviewed and the facility demonstrated compliance with permit limits.
VRO	**O-N Minerals Chemstone Co. – Strasburg** Strasburg, Virginia Shenandoah County Registration No. 80252	**Discovery dates** – 5/19/08 - 10/31/08 **Alleged violations:** **1st NOV** - SO2 values from testing the Rotary Kiln (conducted on 10/30/07) were 66.1 lbs/hr. That emissions rate corresponds to a PTE of 289.5 tons/yr and is above PSD significance levels. The facility does not have a PSD permit. **2nd NOV** - As a result of previous enforcement actions the facility conducted several stack tests on the Hydrator. The test results were evaluated and documented two periods of time where operations occurred while exceeding emission limits for filterable PM.	**1st NOV** -Issued 6/3/08 **EPA NOV** - Issued 7/29/08 **2nd NOV** - Issued 1/29/09 **CO** *- In Development* **Additional Information:** 8/21/08 – The facility conducted a second test on the rotary kiln. 9/24/08 - EPA met with the facility to discuss the EPA issued NOV. 10/31/08 test results were reviewed and the facility demonstrated compliance with permit limits. On 3/23/09 discussions with the facility resulted in the facility requesting time to provide a proposal for a Supplemental Environmental Project (SEP).

BRRO	**Electronic Data Systems, Inc.** Clarksville, Virginia Mecklenburg County Registration No. 30142	**Discovery date** - 9/23/08 **Alleged violations**: The facility constructed a stationary source prior to obtaining a permit for diesel emergency generators.	**NOV** - Issued 2/11/09 **CO** - Executed 4/3/09 **Civil Penalty** – Paid on 4/6/09 ($9,447.00) **Case Closure Date** – 4/8/09 **Additional Information:** The facility was issued a NSR permit on December 18, 2008.
SWRO	**American Electric Power – Clinch river Plant** Cleveland, Virginia Russell County Registration No. 10236	**Discovery date** – 2/3/09 **Alleged violations:** Continuous Emission Monitors (CEM's) recorded sulfur dioxide emission exceedances for the lbs/hr per unit and the lbs/MMBtu per stack (3-hour block average) limits for the B&W boilers (Permit and Consent Order violations)	**NOV** -Issued 3/5/09 **CO** - Executed 7/16/09 **Civil Penalty** *– Submit by 8/16/09* *($77,670.00)* **Additional Information:** *8/16/09 – APCO will submit permit application for the SOP permit to include language for SO2 limits.* *APCO will complete sulfur analysis on each shipment of coal.* *Submit quarterly SO2 reports for a period of two years.*
EPA	**Honeywell International Inc.** Hopewell, Virginia Hopewell City Registration No. 50232	**Discovery date** – 11/6/07 **Alleged violations:** 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)	**EPA NOV** - Issued 3/10/09 **Additional Information:** Case was referred by EPA to DOJ on 9/30/08 and the NOV meeting was held on 5/27/09.

BRRO	**GP Big Island LLC** Big Island, Virginia Bedford County Registration No. 30389	**Discovery date** – 3/6/09 **Alleged violation:** Facility failed to conduct required PM stack test within 5 calendar years of the previous test on Boilers 4 & 5.	**NOV** - Issued 3/23/09 **CO** - Executed 6/26/09 **Civil Penalty** – Paid on 7/6/09 ($5,148.00) **Case Closure Date** – 7/13/09 **Additional Information:** Stack Test was conducted on 3/30/09. Stack test results were reviewed on 4/30/09. All values were within permit limits.
EPA	**Ashland Aqualon Functional Ingredients (Hercules)** Hopewell, Virginia Hopewell City Registration No. 50363	**Discovery date** – 11/8/07 **Alleged violations:** Alleged violations of the Cellulose MACT (40 CFR 63 Subpart UUUU) and the associated Leak Detection and Repair (LDAR) program.	**EPA NOV** - Issued 4/2/09 **Additional Information:** Case was referred by EPA to DOJ on 9/30/08 and the NOV meeting was held on 7/8/09.
BRRO	**CP Films, Inc – Plant 1** Fieldale, Virginia Henry County Registration No. 30294	**Discovery date** – 3/11/09 **Alleged violations:** Failure to record and provide operating parameters for the Air Pollution control equipment from 7/1/08 through 10/27/08 as the result of a software failure.	**NOV** - Issued 4/15/09 **CO** - Executed 7/23/09 **Civil Penalty** – *Submit by 8/23/09* *($11,154.00)* **Additional Information:** New computers installed on 5/4/09 Consent Order is in review at the facility.

TRO	**Southeastern Public Service Authority (SPSA) – Refuse Derived Fuel Plant** Portsmouth, Virginia Portsmouth City Registration No. 61018	**Discovery date** – 4/23/09 **Alleged violation:** Quarterly Excess Emissions Reports (EERs), document CO limits being exceeded during 6 different quarterly reports since July 2005.	**NOV** - Issued 4/23/09 **CO** *- In Development* **Additional Information:** Case is in Review On 5/28/09 had an NOV meeting with the facility. The facility is updating the BMP's to reduce CO emissions and promote complete combustion. The Title V permit was amended on 7/21/09 to incorporate the CO limit from the PSD Permit.
VRO	**University of Virginia** Charlottesville, Virginia Charlottesville City Registration No. 40200	**Discovery date** – 3/9/09 **Alleged violation:** Quarterly Excess Emissions Reports (EER), document NOx exceedances for Boiler No. 5 for the 2008 4th Quarter and 2009 1st Quarter.	**NOV** - Issued 5/13/09 **ECA*** *- In Development* **Civil Penalty** – None **Additional Information:** *Facility will be requesting a permit amendment.* ***Executive Compliance Agreement**

CO's Issued from January through June 2009.

PRO	**Waverly Particle Board Co, LLC** Waverly, Virginia Sussex County Registration No. 50169 SIC 2493 NAICS 321219 Veneer, Plywood and Engineered Wood Product Manufacturing	**Discovery date** – 10/1/2008 **Alleged violations:** Waverly Particleboard had not completed installation or testing of the Air Pollution Control Equipment as of October 1, 2008 and therefore did not meet the requirement of the Plywood CWP MACT (40 CFR 63, Subpart DDDD).	**NOV** -Issued 10/22/08 **CO** -Executed 02/09/09 **Civil Penalty** - No Penalty Assessed **Compliance Milestones:** Status reports are due to DEQ on 2/1/09, 5/1/09, 7/1/09, *11/1/09, 2/1/10, and 5/10/10.* *By 5/10/10, the facility shall comply with the PCWP MACT.* *By 11/5/10, the facility will have completed compliance testing.* *Final compliance will be determined after test results are submitted to DEQ for review.*
PRO	**Kaiser Aluminum Fabricated Products LLC** Richmond, Virginia Chesterfield County Registration No. 50249	**Discovery date** - 6/12/08 **Alleged violations:** The facility failed to submit the annual Title V certification. Facility was unable to have records available from July through December 2007	**NOV** - Issued 6/20/08 **CO** - Executed 5/7/09 **Civil Penalty** – Paid on 5/15/09 ($12,699.00) **Additional Information:** 07/28/08 - DEQ reviewed follow-up records.
TRO	**US Navy - Norfolk Naval Shipyard** Portsmouth, Virginia Portsmouth City Registration No. 60326	**Discovery date** - 4/3/08 **Alleged violations:** The violations involve incorrect Volatile Organic Compounds calculations and record keeping as required by the National Emission Standards for Shipbuilding and Ship Repair (MACT Subpart II).	**NOV** - Issued 6/30/08 **CO** - Executed 6/2/09 **Civil Penalty** – No Penalty Assessed **Additional Information:** 9/29/08 – DEQ reviewed the corrected emission calculations and records. MACT audit is currently scheduled to be completed 8/09. **Compliance Milestones:** *The facility will complete a Facility wide MACT audit by 12/31/09.*

CO's In Development – Previously Reported NOV's

EPA	**Aleris International Inc.** Richmond, Virginia Chesterfield County Registration No. 50099	**Discovery date** – xx/xx/xx **Alleged violations:** Alleged violations of Hazardous Air Pollutants for Secondary Aluminum Production NESHAP (40 CFR Part 63, Subparts A and RRR). Failure to design and install adequate capture and collection system, conduct adequate performance testing, properly establish and maintain reactive flux injection rates, maintain records of molten metal levels, rates, prepare and implement adequate OM&M and SSM plans, and to maintain free flowing lime in continuous lime injected fabric filters.	**DOJ Complaint** – Filed 2/12/09 **CD** - Finalizing Signatures 6/22/09 **Civil Penalty** *– ($162,045.00)* *Contingent on Bankruptcy.* **Additional Information:** Negotiations shave been ongoing. On 6/16/09 Governor Kaine provided his approval for settlement by Consent Decree in the Joint Federal and Multi-State Action. **Compliance Milestones:** The Richmond Facility will be required to conduct performance testing within 12 months from the execution of the consent decree. Upon the completion of testing the Facility will be required to conduct HCL "Potential-to-Emit ("PTE") Analyses". Finally, based on the results of the PTE analyses a number of possible scenarios and the appropriate compliance measures will be required.

All other Consent Orders in development are listed in the NOV's Issued from January through June 2009 section.