

# MINUTES

## STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, MARCH 26, 2010

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

Board Members Present:

Richard D. Langford

Vivian E. Thomson

Randolph L. Gordon

Manning "Chip" Gasch, Jr.

Bruce C. Buckheit

Hullihen W. Moore

Sterling E. Rives, III

Department of Environmental Quality:

David K. Paylor

Cindy M. Berndt

Attorney General's Office:

Kerri Nicholas, Assistant Attorney General

The meeting was convened at 9:40 a.m., recessed at 12:15 p.m., reconvened at 1:20 p.m., went into closed session at 2:00 p.m., reconvened in open session at 2:53 p.m. and adjourned at 4:45 p.m.

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**Minute No. 1 - Agenda Review and Approval:** The Board approved the agenda with the addition of receipt of a petition for rulemaking from Mr. Kenneth Strong regarding ELF Magnetic Fields.

**Minute No. 2 - Recognition of Richard D. Langford and Vivian E. Thomson:** The Board recognized Mr. Langford and Ms. Thomson for their years of service to the Board as Chair and Vice-Chair, respectively.

**Minute No. 3 - Minutes:** The Board, on a motion by Mr. Rives, unanimously approved the minutes from the November 20, 2009, and January 8, 2010, meetings.

**Minute No. 4 - Standing Rules and Procedures:** Mr. Sterling Rives reviewed for the Board the Standing Rules and Procedures that were modified based on the Board's comments at the January meeting. The Board, based on a motion by Ms. Thomson, unanimously approved the rules and procedures with two minor edits.

**Minute No. 5 - Particulates in Roda/Fugitive Dust Petition/Closed Session:** Ms. Crystal Bazyk, Air Compliance Manager in the Southwest Regional Office, briefed the Board on activities since the January 2010 meeting. She reviewed for the Board recommendations received from the Agency for Toxic Substances and Disease Registry (ATSDR) and the Virginia Health Department, updated the Board on the Memorandum of Agreement with the Department of Mines, Minerals and Energy and the activities that have occurred since the January meeting.

Dr. Lora Werner with the ATSDR of the Center for Disease Control appeared. Dr. Werner reviewed for the Board the Health Consultation Review of Ambient Air Monitoring Data performed by the ATSDR previously provided to the Board.

Dr. Dwight Flammia, State Public Health Toxicologist with the Virginia Department of Health, appeared to brief the Board on the results of the review the Health Department performed on the ATSDR Health Consultation Review and the Department's Air Monitoring Study.

Mr. Bruce Lambert with the Department of Mines, Minerals and Energy appeared to discuss the Department's activities since execution of the Memorandum of Agreement with the Department. He discussed the number of complaints received, the Department's response times and the results of the associated inspections.

Mr. Glen Besa of the Sierra Club appeared regarding Roda and urged the Board to take action in order to ensure that the reasonable precautions are maintained to address concerns over fugitive dust in Roda.

Ms. Karen G. Sabasteanski with the Office of Regulatory Affairs presented for the Board's consideration the results of the public comment period on the petition for rulemaking to amend the Board's fugitive dust regulations. Ms. Sabasteanski advised the Board that the petitioners requested that additional language be added to the fugitive dust standards to clarify what is meant by "reasonable precautions" and that the fugitive dust standard provide additional examples of reasonable precautions specific to the type of activities that contributed to a documented dust problem. Further, the petitioners state that the proposed amendments would strengthen and clarify the fugitive dust standard without imposing significant burdens on regulators or on the facilities subject to the regulations.

Ms. Sabasteanski informed the Board that the petition had been public noticed and reviewed the comments and the response document for the Board.

Several citizens appeared to address concerns with particulates in Roda and the fugitive dust petition. The Board heard from Mr. Adam Wells, Ms. Judy Needham, Ms. Dorothy Taulbee, Mr. Tug Smith, Ms. Laura Miller, and Mr. Peter Joyce.

The Board then, on a motion by Mr. Rives, unanimously voted to go into closed meeting pursuant to § 2.2-3711 (a)(7) of the Code of Virginia for consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by counsel, concerning specific legal issues previously identified during the Board's discussion; i.e. whether consideration of a permit limits the Board's authority to proceed under § 10.1-1307 D of the Code of Virginia; whether to direct that a permit be issued and/or initiate an enforcement proceeding and the need for a finding on the cause of the fugitive dust problem in any enforcement action.

The Board, on a motion by Mr. Rives, unanimously voted to end its closed meeting and certified that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

The Board, based on the Board book material, presentations and public comment, and Board discussion, on a motion by Mr. Buckheit, directed the Chair, in consultation with DEQ and counsel to Board, to identify and present to the Board the options for enforcement action under Section 9 VAC 5-40 against the Cumberland Resources and A & G Resources Company for their operations in the Roda vicinity and to present the options to the Board at the next meeting. The motion passed on a vote of 4 to 3 (Messrs. Moore, Rives and Buckheit and Ms. Thomson voted aye. Messrs. Langford, Gordon and Gasch voted nay.)

Further, the Board, on a motion by Ms. Thomson, unanimously voted to defer action on the petition for rulemaking on fugitive dust to the next meeting.

**Minute No. 6 - Air Division Director's Report :** Mr. Michael Dowd, Air Division Director, presented an update on a state operating permit being developed for the Mirant Potomac River Generating Station for NOx; the current status of U.S. Environmental Protection Agency's (EPA) regulation of greenhouse gases, action by the Commonwealth of Virginia's Attorney General petition to EPA challenging its regulation of greenhouse gases, and emissions inventory; and on the permitting process for Old Dominion Electric Cooperative's proposed Cypress Creek Power Station, including discussion with the Board of several permit issues such as CO and NOx offsets.

**Minute No. 7 - Letter to EPA Regarding Petition for Reconsideration:** Mr. Bruce Buckheit moved, and Ms. Thomson seconded, that the Board adopt a resolution that states that the State Air Pollution Control Board was not consulted by the Virginia Attorney General prior to filing his action challenging EPA's endangerment finding on greenhouse gases and that the assertions in the Attorney General's complaint do not necessarily represent the views of the Board. After some discussion, Mr. Rives offered a substitute motion that the Board direct the Chair to

communicate to the EPA the fact that the Virginia Air Pollution Control Board did not request the petition for reconsideration filed by the Attorney General. Ms. Thomson seconded the substitute motion.

The vote to accept the substitute motion passed on a 4 to 3 vote (Messrs. Moore, Buckheit and Rives and Ms. Thomson voted aye and Messrs. Gordon, Langford and Gasch voted nay.) The Board then approved the motion on a 4 to 3 vote (Messrs. Moore, Buckheit and Rives and Ms. Thomson voted aye and Messrs. Gordon, Langford and Gasch voted nay.)

**Minute No. 8 - Royal Fumigation, Suffolk:** The Board received a report from Ms. Maria Nold of the Tidewater Regional Office on the Royal Fumigation located in Suffolk.

**Minute No. 9 - High Priority Violators Report:** The Board received a report from Mr. Craig Nicol with the Division of Enforcement on high priority violators for the quarter ending December 31, 2009.

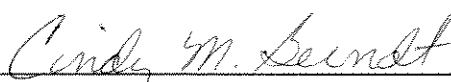
**Minute No. 10 - Public Forum:** Mr. Glen Besa of the Virginia Chapter of the Sierra Club appeared during the public forum concerning the Hopewell Health Assessment. He requested that the Board set aside time on the agenda for the next meeting to discuss the Assessment. Ms. Helen Eggleston, Mr. Michael Eggleston, Ms. Lisa Craig and Mr. Cale Jaffe appeared to present their continued concerns with Old Dominion Electric Cooperative's proposed Cypress Creek Power Station.

**Minute No. 11 - State Advisory Board Appointments:** The Board, on a motion by Mr. Langford, unanimously approved the appointment of Mary Randolph to the State Advisory Board on Air Pollution with a term expiring on December 31, 2011.

**Minute No. 12 - UVA Green House Gas Project:** Students with the University of Virginia Interdisciplinary Program in Environmental Thought and Practice presented a review of their greenhouse gas project that includes research on what greenhouse gases mean for climate change and the potential impacts of climate change locally and more specifically potential impacts on Virginia; and, when finalized, will include recommended policy options for the Commonwealth based on an updated analysis of Governor Kaine's Climate Change Commission including researching actions of other states.

**Minute No. 13 - Legislative Update:** The Board received a report from Ms. Angela Jenkins on bills passed by the 2010 General Assembly.

**Minute No. 14 - Petition for Rulemaking on ELF Magnetic Fields:** Ms. Cindy M. Berndt presented a petition for rulemaking from Mr. Kenneth Strong requesting that the Board initiate a rulemaking on ELF magnetic fields. The Board received the petition.

  
Cindy M. Berndt

Approved Minute No. 2  
6/4/10