

TENTATIVE AGENDA AND MINIBOOK
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, MARCH 18, 2011
HOUSE ROOM D
GENERAL ASSEMBLY BUILDING
9TH & BROAD STREETS
RICHMOND, VIRGINIA

Convene – 9:00 a.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 on the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

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

received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

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

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

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

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

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

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

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

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

Petition for Rulemaking, Fugitive Dust (9VAC5 Chapters 40 and 50) - Public Participation Report and Request for Board Action: On November 20, 2009, the department received a petition from Southern Appalachia Mountain Stewards and the Sierra Club to initiate a rulemaking concerning fugitive dust emissions standards for existing and new and modified stationary sources. The petitioners have 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.

To solicit comment from the public on the petition, the department issued a notice that provided for receiving written comment during a comment period. The summary and analysis of the public comments follow. Each issue is discussed in light of all of the comments received that affect that issue.

1. SUBJECT: Actions taken to address fugitive dust concerns.

COMMENTER: Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (DMME/DMLR)

TEXT: The petition was submitted to address fugitive dust concerns the petitioners attribute to coal haulage activities in the Roda community, near Appalachia, Virginia of Wise County. DMME is the state agency that regulates land-disturbing, mining, and reclamation activities from coal mining operations under Chapter 19 of Title 45.1 of the Code of Virginia and the regulations promulgated thereunder (4VAC25-130-700 et seq.). In addition to the regulatory requirements under the Virginia Coal Surface Mining Reclamation Regulations, DMME has published Guidance Memorandum No. 29-09 to address additional measures that may be employed to address fugitive dust problems in the coal producing communities. DMME has worked with DEQ, the Virginia Department of Transportation, the Virginia State Police, permitted coal mine operators, and concerned citizens to address fugitive dust concerns. DMME and DEQ entered into a Memorandum of Agreement (MOA) on December 9, 2009, to coordinate their efforts to facilitate efficient and effective administration of applicable state and federal environmental laws, regulations, and policies for fugitive dust control on and immediately adjacent to active coal mining sites.

RESPONSE: DMME's efforts to coordinate fugitive dust control activities with DEQ and other agencies and individuals are recognized and appreciated.

2. SUBJECT: Requirements and applicability.

COMMENTER: DMME/DMLR

TEXT: The proposed amendments to 9VAC5-40-90 and 9VAC5-50-90 are duplicative of the regulatory requirements that already exist under the Virginia Coal Surface Mining Reclamation Regulations and the recommendations of DMME Guidance Memorandum No. 29-09. DMME requires each permit applicant to address how it will comply with the Clean Air and Clean Water Acts (4VAC25-130-780.18(b)(9 and 10), and 4VAC25-130-784.13(b)(9 and 10), Reclamation plan; general requirements) in the detailed permit application. DMME may require additional corrective measures if a site situation requires such to protect the environment and the health and safety of the public. The proposed amendments would impose, contrary to the petitioners' claim, a substantial and significant financial burden upon the Commonwealth to conduct duplicative enforcement activities.

While the proposed amendments were crafted to specifically address fugitive dust concerns attributed to coal mining activities, they will in fact be applicable to any activity that may result in fugitive dust concerns across the Commonwealth – logging, gas/oil well/pipeline operations, quarry operations, other mining activities, road construction, development projects, farming operations, etc. DMME also requires mineral mining and gas and oil permittees to meet statutory and regulatory requirements for environmental protection, including fugitive dust. The proposed requirements would duplicate these similar to duplicating requirements on coal mines.

RESPONSE: We agree that existing regulations and guidance already address the petitioners' concerns. DMME's fugitive dust regulations and guidance are specific to the mining industry. They are designed to afford affected sources the flexibility needed to address the needs of a particular mining operation at an individual site. In contrast, the air quality regulations are more general. They are designed to address a wide range of potential fugitive dust issues for various industries throughout the Commonwealth. Working cooperatively, both sets of regulations provide adequate controls of fugitive dust. Nothing in either set of regulations prevents a mining source from implementing any of the petitioners' suggestions; indeed, there may be numerous other potential controls not considered in the petition that might better address a particular fugitive dust situation. Revising the air quality regulations to adopt the petitioners' recommendations would, therefore, be unnecessary and inappropriate for the regulations' purpose.

Note that the suggested revisions could potentially engender unintended problems. For example, the installation of washing and watering systems may require permits under National Pollutant Discharge Elimination System (NPDES) authority. In other words, the solution to an air quality problem should not lead to potential water and waste management problems.

In addition to the financial burden associated with duplicative enforcement activities, there would also be significant costs associated with developing an unnecessary regulation. Full-process regulatory development is expensive and time-consuming, involving hundreds of hours of staff time, and thousands of dollars of services and supplies. It would also divert staff from complex major programs mandated by federal and state law.

As discussed in the response to comment 1, we are pleased to be able to continue our cooperative relationship with DMME as well as other affected parties in protecting public health and welfare.

3. SUBJECT: Permits.

COMMENTER: DMME/DMLR

TEXT: The standards that may be applied should reflect the actual site conditions and proximity of the public who may be affected. This is effectively achieved through establishment of site-specific conditions under DMME permits.

RESPONSE: We agree that the establishment of site-specific conditions in a legally enforceable permit is the best means of achieving and maintaining compliance with fugitive dust control requirements.

4. SUBJECT: Statewide regulations for local issues.

COMMENTER: Roger Jones, Big Stone Gap, Virginia; Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: Statewide rulemaking is not appropriate for any alleged local residential community dust problems.

Construction, timbering, and other industries including coal hauling in local residential areas change periodically and at times are intrusive or a significant change to ordinary traffic patterns and significantly different to what the local community is used to; therefore complaints can occur whether warranted or not and state regulations are currently in place to sufficiently handle those situations when warranted. Many times the only access roads available for hauling coal or other commodities is via public roads; truck routes are not always feasible. The term "reasonable precautions" and list are best left open as can include but not all inclusive. The existing dust regulations are sufficient for allowing local solutions to specific problems, if and as problems occur.

To specifically list in a statewide regulation examples of reasonable precautions that are "reasonable" and applicable in every case ignores the simple reality that there will always be differences in each situation which may make such precautions unreasonable at a particular time or location.

RESPONSE: As discussed in the response to comment 2, fugitive dust is a source-specific and locality-specific issue that needs to be addressed in a general manner that will function statewide. The commenter correctly asserts that the list of "reasonable precautions" is a general list of options, to be considered on a case-by-case basis, for those seeking approaches for controlling fugitive dust. Specific approaches that may be best utilized for a specific industry under specific operating conditions in a particular area of the state may not be appropriate for all industries in different areas of the state. Sources should have as much flexibility as possible in developing fugitive dust controls, and not be limited--or perceived to be limited--to a very particular menu of options, whether appropriate or not.

5. SUBJECT: Use of regulations.

COMMENTER: Roger Jones, Big Stone Gap, Virginia

TEXT: When and where do more and more regulations that some entity wants along with even more strict enforcement and normally punitive fines stop? Do the lawyers then sue DEQ to make more money for themselves? It often seems so. More regulations and mandates will never exceed cooperation with the local community.

RESPONSE: We agree that community involvement is an essential element in addressing local fugitive dust problems.

6. SUBJECT: Resolution of complaints.

COMMENTER: Roger Jones, Big Stone Gap, Virginia

TEXT: Data from DEQ's own tests do not warrant additional regulations. If the dust complaints have subsided from actions taken, then why implement mandatory additional regulations. More regulations could prove unworkable and costly to entities that do not seem to have the same dust problems in their respective work areas as those alleged complaints in the petition. But petitions also allow entities to garner additional members and dues no doubt.

RESPONSE: As evinced by the experience in Roda, the current air regulation operated properly in that it allowed the source to work closely with DEQ and other parties to resolve the fugitive dust situation. The current DMME and DEQ regulations and guidance are demonstrated to address such situations effectively.

7. SUBJECT: DMLR regulatory process.

COMMENTER: Roger Jones, Big Stone Gap, Virginia

TEXT: If any additional requirements are still to be imposed, then it should be through the Division of Mined Land Reclamation (DMLR) regulatory process.

RESPONSE: As discussed in the response to comment 2, DMME's fugitive dust regulations and guidance are specific to the mining industry. Mining-specific fugitive dust situations are best addressed in the DMME permit through the establishment of site-specific conditions. In accordance with § 45.1-161.6 of the Virginia Code, DMME is the lead agency with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation.

8. SUBJECT: Necessity of proposed regulations in view of DMME regulations.

COMMENTER: Cumberland Resources Corporation

TEXT: Because DMME has agreed to regulate fugitive dust at mine sites, the proposed regulations are unnecessary.

As a result of discussions with DEQ staff, DMME has announced that it will regulate its permittees in regard to fugitive dust both on and off permit sites. A memorandum to this effect was recently released to operators and presented to the board at its November 2009 meeting. The petitioners argue that DMME can only regulate fugitive dust "resulting from erosion." For this reason, the petitioners contend that DMME cannot regulate fugitive dust at mine sites. This contention is erroneous. All materials present at a mine site, including the extracted minerals temporarily stockpiled for subsequent transport, soils and sediments from disturbed areas and surfacing materials (such as crushed stone), are exposed to the atmosphere and thus acted upon by the forces of wind and water erosion.

Erosional forces work to break down larger particles into increasingly smaller particles. Once the particles are small and dry enough to become airborne, they are characterized as "dust." Therefore, the resulting "dust," which may ultimately become "fugitive dust," has in fact "resulted from erosion" and can be regulated by DMME. Additionally, both the Surface Mining Control and Reclamation Act (SMCRA) and its Virginia counterpart specifically require the mining agencies to "insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property. . . ." (See § 515(b)(17) of SMCRA (30 V.S.C. § 1265(b)(17)) and Va. Code § 45.1-212A). In its Guidance Memorandum of November 1, 2009, DMME cites 4 VAC §§ 25-130-816.150(c) and 25-130-817.150(c) in support of its authority to regulate fugitive dust. These regulations specifically authorize DMME to establish "any necessary design criteria" for haulroads. In *Natural Resources Defense Council, Inc. v. EPA*, 937 F.2d 641, 649 (D.C. Cir. 1991), the Court of Appeals found that SMCRA provides ample authority for regulation of fugitive dust associated with haulroads. In their filing, petitioners do not discuss this case or the haulroad regulations under SMCRA and the Virginia Surface Mining Act. Finally, DEQ is not currently staffed to enforce fugitive dust regulations at mine sites. DMME is already staffed, equipped, and familiar with the facilities and areas of interest. It makes no sense to spend additional taxpayer money to enable DEQ to do a job that DMME is already capable of doing.

RESPONSE: As discussed in the response to comment 2, DMME's fugitive dust regulations and guidance are specific to the mining industry. Mining-specific fugitive dust situations are best addressed in the DMME permit through the establishment of site-specific conditions. As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation.

9. **SUBJECT:** Stringency of proposed provisions.

COMMENTER: Cumberland Resources Corporation; Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: Under Va. Code § 13.1-1308 A, any proposed regulations that are more restrictive than the corresponding federal regulations must be referred to the General Assembly. The petitioners argue that this provision is not applicable "because the Clean Air Act already places restrictions on the release of particulate matter." While EPA regulates some releases of particulate matter, it does not regulate all releases. In fact, EPA recently declined to regulate the release of fugitive dust from roads at coal preparation plants. (See Standards of Performance for Coal Preparation and Processing Plants; Final Rule, 74 FR 51950-51985, October 8, 2009.) In declining to issue these regulations, EPA noted that SMCRA already regulates emissions associated with roads from mines and plants at mines.

In response to EPA's decision, the Sierra Club has initiated proceedings to compel EPA to regulate fugitive dust from roads at coal preparation plants. Specifically, the Sierra Club has filed a petition for reconsideration with EPA and a petition for review with the Court of Appeals for the District of Columbia Circuit. The Sierra Club contends that EPA acted arbitrarily and capriciously in not requiring control measures such as "paving, sweeping excess coal dust, wetting of the road surface, or tire washes." (See Standards of Performance for Coal Preparation and Processing Plants; Proposed Rule, 74 FR 25304, 25313, 25323, May 27, 2009, which lists possible control measures that were not adopted in the final rule.)

So, the Sierra Club is telling EPA and the Court of Appeals that EPA must adopt regulations like the ones proposed to the board, and, at the same time, it is telling the board that equally restrictive federal regulations are already in place. The truth is, the regulations being proposed to the board are more restrictive than any existing EPA regulations, and, therefore, the proposed regulations must go to the General Assembly.

RESPONSE: At this point in the process, there is no proposed regulation in any form that could potentially meet the criteria in § 13.1-1308 A. That issue would have to be addressed should a formal proposal be developed.

10. **SUBJECT:** Statewide rulemaking to address local issues.

COMMENTER: Cumberland Resources Corporation

TEXT: A proposal for statewide rulemaking is not the proper forum to address alleged problems at a specific location. The petition states, "the fugitive dust standard should provide additional examples of reasonable precautions specific to the type of activities that contributed to the documented dust problem in Roda." The proposed rulemaking, if adopted, would apply to all industries statewide. It would be shortsighted to write new regulations with such sweeping implications based on one set of local conditions. If additional regulations are warranted, then research needs to be performed to better define what "reasonable precautions" would mean under a wide range of geographic and topographic settings.

RESPONSE: As discussed in the response to 2, regulatory provisions relevant to a specific industry type in a particular locality are not appropriate in a regulation intended to control a wide range of industries located throughout the entire state.

Note that no proposed rulemaking yet exists; the purpose of the petition process is to determine whether the rulemaking process should be undertaken at all.

11. SUBJECT: Violation of applicable air quality standards.

COMMENTER: Cumberland Resources Corporation, Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: The proposal is based on a faulty presumption that the existing conditions rise to the level of a violation of applicable air quality standards. The petition refers to a "documented dust problem" in Roda. Our analysis, based on months of scientific data collection, as well as that of DEQ staff, has shown that applicable fugitive dust standards are not being violated at Roda. In this connection, we adopt and incorporate by reference the reports submitted by Cumberland and DEQ staff at the meetings last year. There is no "documented dust problem" at Roda that necessitates additional regulation by the board.

Even if there had been a documented dust problem in Roda, it would be unwise to impose costly regulations of statewide applicability based on an isolated situation that arose during the driest part of the year on an unusual road.

RESPONSE: Air quality monitoring by DEQ in the Roda community indicated one potential exceedance of the national ambient air quality standard (NAAQS) for particulate matter less than 10 microns (PM₁₀). This occurred at a location that did not meet EPA siting criteria for a PM₁₀ monitor, and the monitor was not installed in a manner that would prevent potential operational problems such as particulate re-entrainment. In addition, several activities were occurring during the study in the area of the monitor that could bias the results; a home was burnt down as a means of land clearing and a trash burn barrel was used in close proximity to the monitor. No other potential violations of the PM₁₀ NAAQS were noted by monitoring conducted by DEQ or Cumberland Resources Corporation. The proper approach for addressing fugitive dust issues is to work closely with the source and the community to look for solutions to solve immediate problems with the understanding that as conditions change, solutions may differ. This was the case with the specific situation in Roda, in which the fugitive dust issue was addressed without the creation of new regulations.

12. SUBJECT: Reasonable precautions.

COMMENTER: Cumberland Resources Corporation

TEXT: The proposed additional "reasonable precautions" are not universally applicable and present numerous technical problems.

Flexibility is a key component of a successful fugitive dust management program because conditions change from site to site and from day to day. The proposed regulations do not provide for flexibility. For example, proposed item #6 requires "the use of water to wash the wheels, undercarriage and other parts of every vehicle that hauls coal or other materials before or immediately after the vehicle leaves a dusty, dirty or muddy surface." (Emphasis added.) What "other parts" should be washed? The proposed regulation provides no answer. Also, the use of truck washes and other water-based dust abatement measures are necessarily limited to periods when the temperature is above freezing. There is no allowance for this in the proposed regulations. It is especially noteworthy that while the petitioners propose to modify what is "reasonable" by including consideration of proximity to homes and atmospheric conditions that might affect movement of particulate matter, there is no provision in their proposal for consideration of conditions that affect the "reasonableness" of their proposed measures as applied to specific conditions. The proposed regulations illustrate a basic lack of understanding of the issues.

Another example of this lack of understanding is the proposal to require trucks to be washed "immediately after" leaving a dusty, dirty or muddy surface. This requirement presents serious operational problems. For example, this company washes trucks hauling from several different mine sites at two central washing stations. While located between the mine sites and the public roads, these wash stations are not washing the trucks "immediately after" leaving a dusty, dirty or muddy surface. Our current arrangement is working well, as attested to by the petitioners themselves, so why propose this wording? We can only conclude that this is either (a) another example of petitioners lack of understanding in regard to these issues or (b) an attempt to force installation of expensive truck washing facilities at every individual mine site, even if such sites are served by common roads, which favor the concept of a centralized washing facility.

Another example is proposed requirement for rumble strips or speed bumps "before vehicles enter the public road." While these measures may help remove material from the trucks, the resulting impacts produce a lot of noise. If occupied dwellings are nearby, this noise may be a source of irritation for residents, as we often haul at night.

RESPONSE: As discussed elsewhere, potential measures designed to control fugitive dust for air quality purposes need to be broad. Sources must work closely with DEQ and DMME in order to evaluate the best controls needed for their individual situation; sources also need to be flexible in adjusting their plans should a particular measure not be effective or create a different problem. Therefore, a broadly worded regulation that allows operational flexibility for both the department and the regulated community is essential.

13. SUBJECT: Flexibility and economic issues.

COMMENTER: Cumberland Resources Corporation

TEXT: The examples provided in these comments illustrate how a "one size fits all" approach as proposed by the petitioners is not practical for fugitive dust. The existing regulatory requirements provide a strong foundation for protection of the public while maintaining the needed flexibility to address complex and variable conditions in the field.

There are numerous other arguments which could be made against this proposal, including the negative economic impacts on all industries capable of producing fugitive dust (not just the coal industry). Ironically, the proposed regulations would punish the very operators, such as this company, who have initiated sweeping voluntary initiatives to control fugitive dust in and around the communities where they work. In this regard, not only are the proposed regulations impractical and unnecessary, they are patently unfair as well.

RESPONSE: As discussed elsewhere, the regulations need to be flexible enough to enable sources to deal with fugitive dust issues as expeditiously and appropriately as possible.

14. SUBJECT: General coal industry position.

COMMENTER: Alpha Natural Resources

TEXT: The petitioners have proposed the amendments to address an issue that is specific to coal mining operations in Roda, Virginia. Alpha does not presently conduct coal mining operations in or near Roda. But, if approved, the proposed amendments would apply to Alpha's business, as well as other innumerable and unknown businesses throughout the Commonwealth. Our hope is that the coal industry can continue to achieve a solution to the fugitive dust issue by working with the appropriate state agency and residents in the affected communities. That approach will generate better and more specifically-tailored solutions for the issue at hand than the drastic approach of rulemaking. Alpha has voluntarily initiated fugitive dust controls at its Moss 3 preparation Plant which include additional paving of entrances, a vacuum street sweeper, a truck tire wash, a dust suppression system at the truck scales, and many other similar controls.

RESPONSE: As discussed elsewhere, sources must work closely with the appropriate state agencies and other parties to resolve fugitive dust issues in a manner appropriate to the source and the locality.

15. SUBJECT: Success of voluntary measures.

COMMENTER: Alpha Natural Resources; Virginia Independent Power Producers

TEXT: As stated in the petition, voluntary actions by coal mine operators to reduce fugitive dust have been highly successful. The petition outlines the fugitive dust issues in Roda, citing a study by Dr. Viney P. Aneja ("Characterization of Particulate Matter (PM₁₀) in Roda, Virginia," Department of Marine, Earth, and Atmospheric Sciences, North Carolina State University, Raleigh, North Carolina), which claims that levels of particulate matter in Roda were "up to three times the national standard for [PM₁₀]." Roda Road is traveled by coal haul trucks that service coal mines (none of which are Alpha's). According to the petitioners, elevated levels of PM₁₀ are caused by these haul trucks. The petition also states that, following Dr. Aneja's presentation to the board, coal mine operators in Roda "took significant additional steps to reduce the release of fugitive dust from coal trucks in Roda and nearby communities." These steps, which DEQ recognized were reasonable in a January 4, 2010 letter to DMME, included operating water trucks, and sweepers, paving internal road surfaces, and installing truck washing systems.

If the results of the Aneja study were accurate, the steps taken by Roda's coal mine operators resolved the issue. According to the petition, the results of air monitoring studies conducted by DEQ showed dramatic improvement. This improvement was verified in DEQ's January 4 letter, which stated, "We believe the controls put in place in the Roda community have shown positive results and we are pleased that the community has confirmed improvements in situations related to fugitive dust."

The result of the DEQ monitoring study demonstrate that those involved in the day-to-day operations at coal mines best understand the fugitive dust issue and are best positioned to take remedial action. The results also show that the most effective response to the issue must be determined on a case-by-case, mine-by-mine basis. The proposed amendments create a strong presumption in favor of the reasonableness of the enumerated precautions. In turn, they may have the unintended effect of reducing the use of more effective fugitive dust controls in favor of the specifically enumerated precautions. Indeed, in the January 4 letter, DEQ acknowledged that a flexible approach is necessary to control fugitive dust:

DEQ understands that what might constitute reasonable measures to control fugitive dust at a certain facility at one point in time might not be considered to be reasonable at a different facility or at the same facility at a different time under a different set of circumstances.

The prudent course of action is to continue to allow the specific coal mine operators in Roda to tackle the fugitive dust issue. Their response following Dr. Aneja's presentation indicates the industry's willingness to cooperate. The solutions initiated by the coal mine operators are more effective than the proposed amendments could be.

RESPONSE: As discussed elsewhere, the regulations need to be flexible enough to enable sources to deal with fugitive dust issues as expeditiously and appropriately as possible.

16. SUBJECT: DMME authority.

COMMENTER: Alpha Natural Resources

TEXT: Although the petitioners acknowledge the effectiveness of the actions taken by mine operators, they remain concerned about the fact that these actions were voluntary. If promulgated, the proposed amendments would be enforced by DEQ. The petitioners are incorrect in stating that DMME has only limited authority to tackle the issue of fugitive dust caused by coal haul trucks. They complain that DMME can only regulate fugitive dust that is "attendant to erosion." However, the conditions that petitioners seek to address through the proposed amendments are already within the scope of DMME enforcement. Dust from erosion as well as dust generated from stockpiled coal and soil, internal roads, crushing and processing operations, or other related activities is currently regulated by DMME.

DMME is the agency vested with the authority to regulate fugitive dust from coal trucks and is in the best position to do so. Indeed, DMME recognizes this authority and has elected to regulate coal haul truck fugitive dust as set forth in the DEQ/DMME MOA. DMME's authority to regulate fugitive dust attendant to erosion and other mining activities cannot now be further delegated to DEQ because the petitioners would prefer DEQ rather than DMME as the enforcement agency.

RESPONSE: As discussed elsewhere, the air quality regulations, which are general in nature, need to be flexible enough to enable a variety of sources to deal with fugitive dust issues as expeditiously and appropriately as possible throughout the state. As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation. Note that adding certain measures to the list of reasonable measures does not automatically make those specific measures legally enforceable, nor does it make implementation of voluntary measures permanent. As discussed elsewhere, the list is a general list of options to be considered on a case-by-case basis and is not intended to limit approaches to fugitive dust control.

17. SUBJECT: Statewide rulemaking to address a local issue.

COMMENTER: Alpha Natural Resources

TEXT: The proposed amendments are a drastic step to correct this isolated issue. When presented with the results of the Aneja study, coal mine operators near Roda acted quickly and efficiently to remediate the elevated levels of PM₁₀. Their response was effective. The flexibility and efficiency with which the coal mine operators were able to respond was an integral part of the solution. The proposed amendments would undermine this flexibility and efficiency, and would create presumptions of reasonableness for certain actions that, although reasonable, may not be the best course of action for every situation.

Coal mine operators and DMME should be given the opportunity to continue to address the issue. Amending statewide stationary source regulations should be a last step rather than a first step. The proposed amendments would have a far-reaching effect, well beyond the coal industry and Roda. Such action should be taken deliberately, and only when necessary. If promulgated, the amendments would apply statewide to all trucking and haul operations on public roads attendant to each and every stationary source in the Commonwealth. The magnitude of the economic impact on Virginia industries due to the inflexibility of the proposed amendments cannot be ascertained. But in the light of the success of the voluntary initiatives already taken by coal mine operators and DMME's documented willingness to regulate fugitive dust from coal haul trucks, the proposals are wholly unnecessary.

Furthermore, between DMME and DEQ, DMME is in the best position and is the best-equipped to tackle this issue. DMME is already staffed and already has the requisite expertise to effectively require and enforce permit conditions for controlling fugitive dust. Delegating DMME's authority to DEQ would require significant time and resources, and would be a waste of the state's precious fiscal resources.

RESPONSE: As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation.

18. SUBJECT: Stationary source regulations.

COMMENTER: Alpha Natural Resources

TEXT: If rulemaking is to take place, the proposed amendments to the stationary source regulations are not appropriate. The provisions that petitioners propose to amend, 9VAC5-40-90 and 9VAC5-50-90, were promulgated by the board to regulate fugitive dust at new and modified stationary sources and existing stationary sources. A "stationary source" is any building, structure, facility or installation which emits or may emit any air pollutant. As described in 9VAC5-10-20, a "stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same 'major group' (i.e., which have the same 2-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21)." Haul trucks traveling on public roads are not within the scope of this definition. Obviously, a coal truck is not a building, structure, facility or installation.

Also, coal haul trucking operations do not fall within the second part of the definition. First and most importantly, the major group for coal mine operations is 12. The activities listed for establishments under major group 12 are coal mining activities; trucking and hauling operations on public roads are not included. Rather, the trucking operations fall under

major group 42, motor freight transportation and warehousing. Second, the trucking operations may or may not be "under the control of the same person" that operates the coal mine. The determination of whether the hauling activities are a stationary source should not turn on whether the same owner directs both activities. It would be illogical to regulate trucks leaving coal mines that belong to the mine operator and not regulate all other trucks leaving the site or any other site.

RESPONSE: 9VAC5-40-90 and 9VAC5-50-90 apply, as appropriate, to each source of fugitive dust emissions at a stationary source. In accordance with the general definition of "source" found at 9VAC5-10-20 of 9VAC5-10 (General Definitions), a source is "any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals."

"Fugitive dust" is defined in 9VAC5-40-70 and 9VAC5-50-70 as "particulate matter composed of soil or other materials of natural origin, or both. Fugitive dust may include emissions from haul roads, wind erosion of exposed surfaces and storage piles and other activities in which the material is either removed, transported or redistributed." While every effort is made to organize the regulations in a logical manner, control of fugitive dust, by its very nature, does not fall neatly into a single category. It is most expedient and convenient to regulate fugitive dust generated by mobile sources in the current stationary source category. The commenter does not suggest an alternative way of regulating fugitive dust from trucks; however, locating such requirements in a new, separate regulation or chapter would be unnecessarily complex, and more difficult for regulated entities to comply with.

19. **SUBJECT:** Statewide regulations for local issues; emissions from electric generating plants.

COMMENTER: Birchwood Power Partners

TEXT: It would be more effective to revise the rules that apply to specific sources of concern rather than those that apply to general source categories such as the rules proposed for revision. The concern the amendment is designed to address is a small subset of all the stationary sources in Virginia. However, the proposed amendments would apply to all existing and new stationary sources of air pollution in the state. DEQ has already imposed terms and conditions addressing fugitive dust emissions from electric generating plants in the state. For example, under the terms of Birchwood's Title V and PSD permits, the facility implements a number of fugitive dust measures that are either specifically required by the permit or have been adopted as best management practices (i.e., "reasonable precautions"). Such measures include the following:

- The facility only purchases coal that has been washed to remove coal fines.
- The coal unloading system is equipped with wet suppression that engages each time coal is unloaded from a railcar.
- The coal pile is monitored for fugitive dust with wet suppression applied if blowing dust is observed.
- The ash and lime silos, coal crushers, coal reclaim bunkers and tripper deck are equipped with fabric filter dust cabinets to prevent fugitive dust.
- All coal conveyors and transfer points are covered to reduce wind blow dust.
- The facility monitors for the presence of coal ash on all roadways, and uses a water truck to apply water to the roadway at least once per weekday except when the roads are adequately wet from rainwater or during freezing conditions.
- On a daily basis, plant personnel inspect the baghouse slab and scrubber hopper areas for ash. If ash is discovered, plant personnel vacuum or wash down the areas.
- Prior to loading ash into disposal trucks, water is mixed with the ash in a pug mill to reduce windblown ash.
- To reduce blowing dust from disposal trucks while traveling down roads, the truck beds are equipped with a fabric cover, which is placed over the ash prior to travel.

RESPONSE: As discussed in the response to comment 2, existing regulations and guidance already address the petitioners' concerns. DMME's fugitive dust regulations and guidance are specific to the mining industry. In contrast, the air quality regulations are designed to address a wide range of potential fugitive dust issues for various industries throughout the Commonwealth. Working cooperatively, both sets of regulations provide adequate controls of fugitive dust. As discussed elsewhere, the general nature of the air quality rule allows sources of various types, including electric generating facilities, the flexibility needed to address their source type as well as site-specific conditions. It is important that sources work closely with the appropriate state agencies as well as the affected community in order to successfully control fugitive dust.

20. **SUBJECT:** Relationship of DMME and DEQ regulations.

COMMENTER: Birchwood Power Partners

TEXT: It is our understanding that DEQ is working cooperatively with DMME to put measures into place to address fugitive dust concerns in communities where coal handling and loading facilities are located. DMME has the responsibility and authority to implement the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (Chapter 19, Title 45.1 of the Code of Virginia). The regulations promulgated by DMME to fulfill this responsibility require mine owners and operators to obtain a permit (4VAC25-130-773) and meet the standards set forth in the rules for various structures, including roads (4VAC25-130-816).

The application to obtain a permit from DMME must be submitted prior to initiation of any mining activity, and must include, as described in 4VAC25-130-780 18(b)(10):

A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC § 7401 et seq.), the Clean Water Act (33 USC § 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards. [Emphasis added.]

Any new road must meet the general performance requirements for roads, including the following requirements of 4VAC25-130-816.150:

(b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to: (1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices . . . (e) Maintenance (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the division.

In addition to meeting the general requirements for roads, primary roads must also meet the surfacing and maintenance requirements set forth in 4VAC25-130-816.151:

(e) Primary roads shall be surfaced with rock, crushed stone, gravel, asphalt, or other material approved by the division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. (f) Maintenance. Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. Sediment control structures shall be cleaned regularly and when sediment accumulation may impair their functioning. Maintenance shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

To obtain a permit, the applicant must also demonstrate that all existing roads that may be used in the proposed mining activity also, as stated in 4VAC25-130-773.16(c)(12)(i), "control or minimize erosion and siltation, air and water pollution, and damage to public or private property. [Emphasis added.]

The regulations provide for public participation during review of the permit application (4VAC25-130-733.13). Once a permit has been issued, DMME is required to conduct at least one partial inspection a month and at least one full inspection a year of each active surface coal mining and reclamation operation under its jurisdiction, as required by 4VAC25-130-840.11(a). If the owner or operator is found to be in violation of any part of the permit, DMME has the authority to require cessation of all or part of the operation, as stated in 4VAC25-130-843.11(a)(1):

An authorized representative of the director shall immediately order a cessation of a coal exploration or a surface mining and reclamation operation or the relevant portion thereof, if the representative finds, on the basis of any inspection, any condition or practice, or any violation of the Act, this chapter, or any condition of a permit or an exploration approval imposed under the Act, or this chapter which: (i) Creates an imminent danger to the health or safety of the public; or (ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources. [Emphasis added.]

Since coal mining and processing facilities are not usually large enough to be required to obtain an air permit, the potential for fugitive dust cannot be assessed by DEQ prior to the initiation of the mining activities. In contrast, the DMME rules apply to any coal mining activities that extract more than 250 tons of coal for other than personal use. As noted above, consideration of the minimization of air pollution (including fugitive dust) associated with the proposed mining activities is part of DMME's permitting process. As required by 4VAC25-130-773.13(c), citizens that are concerned about the potential impact of fugitive emissions may submit comments to DMME during the public comment period, and request an informal conference.

Similarly, DMME already makes routine inspections of mining facilities, whereas DEQ would have to initiate an inspection in response to a complaint. For these reasons, the regulations and permitting program being implemented by DMME are a more effective way of addressing the petitioners' concerns than modifying the DEQ rule that applies to fugitive dust in general.

DEQ and DMME should continue to work cooperatively to address fugitive dust emissions from coal mining and processing facilities.

RESPONSE: As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation. DEQ and DMME are, as addressed in the response to comment 1, committed to working cooperatively to protect public health and welfare.

21. SUBJECT: DMME/DEQ authorities.

COMMENTER: Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: DMME has announced that it will regulate its permit holders in regard to fugitive dust both on and off permit sites. A memorandum to this effect was recently released to coal operators and presented to the board at its November 2009

meeting. DEQ is not currently staffed to enforce fugitive dust regulations at mine sites. DMME is already staffed, equipped, and familiar with the facilities and areas of interest. There is no need, especially during this difficult period of state agency belt-tightening, for DEQ to duplicate DMME's regulatory efforts.

RESPONSE: As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation. As discussed in the response to comment 2, adoption of unnecessary regulatory provisions would not be an appropriate use of scarce state resources.

22. SUBJECT: Existing regulatory requirements.

COMMENTER: Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: Virginia's existing regulatory requirements already provide a strong foundation for protection of the public while maintaining the necessary flexibility to address complex and variable conditions in the field. The petitioners' proposal, if adopted, would unnecessarily and negatively affect all industries capable of producing fugitive dust.

RESPONSE: As discussed in the response to comment 2, the existing regulations and guidance already address the petitioners' concerns. Working cooperatively, both DMME and DEQ's regulations provide adequate controls of fugitive dust.

23. SUBJECT: Actions taken to address fugitive dust concerns/DEQ/DMME cooperation.

COMMENTER: Virginia Independent Power Producers

TEXT: Information presented at the November 2009 board meeting indicated that DEQ and DMME have been working cooperatively to address dust concerns in and near the town of Roda. Such information indicated that substantial progress had been made in addressing dust problems and that regulatory enforcement of the two state agencies, working cooperatively, would continue.

DEQ and DMME have entered into an MOA to work cooperatively to "facilitate efficient and effective administration of applicable state and federal environmental laws, regulations, and policies for the control of fugitive dust on an immediately adjacent to active coal mining sites." The MOA rightly names DMME as the lead agency for issuing and enforcing permits for mining activities. Under the MOA, DMME will notify DEQ of off-site fugitive dust complaints and the two agencies will coordinate their investigations of the alleged violation.

Because DMME already has the authority to regulate the sources identified in the petition, has implemented a permitting program for those sources and has issued recent guidance that incorporates all of the control techniques listed in the petition, the regulations and permitting program being implemented by DMME are a more effective way of addressing the concerns of the petitioners than modifying the DEQ rule that applies to fugitive emissions in general. While DEQ and DMME should continue to work together cooperatively to address fugitive dust emissions from coal mining and processing facilities, the regulatory amendments to the current DEQ fugitive dust rules are not necessary.

RESPONSE: As discussed in the response to comments 1 and 2, DEQ and DMME will continue their successful collaboration in addressing fugitive dust situations. DMME, as discussed elsewhere, is the agency with the primary authority and the capability of addressing emissions specific to the mining industry.

24. SUBJECT: Scope and effect of proposed amendments.

COMMENTER: Virginia Independent Power Producers

TEXT: The regulatory amendments proposed by the petitioners are too broad; if adopted, they would apply to all existing and new stationary sources of air pollution, while the complaints that stimulated the petition pertain only to coal handling and loading facilities. The proposed regulatory amendments are also extremely vague and, if adopted, would be subject to misunderstanding and to numerous disputes.

RESPONSE: As discussed in the response to comment 2 and elsewhere, the proposed amendments are too broad in the sense that they would apply statewide to a wide variety of sources. As discussed in the response to 4 and elsewhere, the proposed amendments are, rather than too vague, too specific in prescribing controls suitable to the mining industry to the numerous sources of fugitive dust. Because of this, we agree that the inclusion of mining-specific provisions in general fugitive dust provisions would indeed create the potential for misunderstanding.

25. SUBJECT: Support for the petition.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: The petition asks that the measures that are to be considered reasonable related to dust problems in southwest Virginia be strengthened and clarified. Endorsing that path will assure the citizens of coal communities that measures that have previously been implemented voluntarily will remain in place and that other communities of southwest Virginia will benefit from these same measures as well.

RESPONSE: As discussed in the response to comment 2, use of a regulation intended to address fugitive dust issues from a wide range of sources throughout the state is not appropriate for addressing issues relative to a particular industry in a particular portion of the state. Expansion of the regulation's list of reasonable precautions, as discussed elsewhere, does not guarantee that voluntary measures will become permanent. The regulations specify that reasonable precautions may

include, but are not limited to, a brief list of potential controls which are essentially examples. Sources are not limited to implementing these controls and no others, nor are sources required to implement each and every one of these controls. Rather, the regulation imparts a source the flexibility to handle fugitive dust issues specific to their situation, including local conditions and the nature of the industry.

26. **SUBJECT:** DMME guidance.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: Presently, DMME has new guidance for road dust compliance and should it be determined that dust control plans aren't adequate, DMME would require plans with permit applications or when an application comes up for renewal. The largest single drawback to this plan of action is found in the numerous complaints that have been registered with DMME in the last few years with almost no violations written and no immediate relief endorsed or enforced by DMME. The DMME guidance states that "since January 2005, the Division has investigated approximately 250 complaints from citizens concerning tracking of material or fugitive dust from permitted haul roads and coal surface mining operations" and that for "the majority" the DMME took no enforcement action. In other words, their reputation precedes them and it is not acceptable.

No one in these communities wishes to wait for permit renewal before dust problems are addressed. I encourage consideration of whether DMME has the authority to solve these problems and whether they have the will to do so. Consider carefully whether the climate at DMME and DEQ has really been transformed and if so, how and why and whether the current reasoning is likely to change the climate permanently or whether as Dr. Aneja's study becomes history, so will all the measures taken so expediently in response to that study.

RESPONSE: As discussed in the response to comment 1, DMME has worked closely with DEQ, as well as other government agencies, the general public, and the regulated community, to resolve a specific issue within a specific area. DMME and DEQ have entered into an MOA that describes how the agencies will coordinate their responses in the future. We are confident that this coordinated approach enables both agencies to effectively deal with fugitive dust issues relative to the mining industry.

The guidance document (Guidance Memorandum No. 29-09: November 9, 2009) issued by DMME states that in reviewing a revision, new permit, or renewal application, DMME will consider the current or potential situation to determine whether fugitive dust may be a concern. In the event DMME observes a situation where fugitive dust from a permitted operation is an issue, DMME may issue the permittee appropriate enforcement action and possible civil penalties to compel compliance. In addition, if the potential for a continual fugitive dust problem exists, DMME may request by a revision order notice (RON) a more comprehensive road maintenance plan from the permittee to address the potential or actual problem. The RON would compel the permittee to develop and implement a more comprehensive plan that will specify the measures the company will take to better control and minimize tracking of material onto public roads and the generation of fugitive dust that results from its operation's traffic.

As discussed elsewhere, the current DEQ regulation, as well as the recommended changes offered by the petitioners, does not require that those specific measures be formally adopted into a permit. Rather, because it is a statewide regulation designed to deal with a statewide issue in a flexible way, the list of reasonable precautions is merely an initial list of options for consideration for an affected source to use in controlling fugitive dust emissions in a way that works for both the specific industry and the community in which it operates. Adding a series of options that are particular to the mining industry is not appropriate for these regulations, and is best approached through DMME's permitting process.

27. **SUBJECT:** Implementation of reasonable measures in Roda.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: After a presentation to the board, those involved in mining in the area of Roda immediately put in place measures to help alleviate the dust problems, even before DEQ could install air monitors. In a sense, the industry at that point strongly argued our case for us through their actions. They put in place measures that they obviously considered reasonable to help alleviate the problems associated with fugitive and coal dust flowing from and being carried from mining operations into living communities. All these measures, at present, are voluntary and DEQ's commitment to ensure that these become permanent is non-existent. Now, with the evidence that these measures can in fact improve the quality of air in the area, through the test results obtained by DEQ's air monitors, these measures should become permanent and encompass other communities in southwest Virginia so they may also participate in improved air quality.

RESPONSE: As discussed elsewhere, voluntary measures undertaken by the mining companies have been effective in controlling fugitive dust in the Roda area. However, revising the list of what are considered to be reasonable measures does not guarantee the permanent imposition of those specific measures on any particular company or to any regulated entities throughout the state. Even if those provisions were to be made mandatory, they would still not preclude a fugitive dust problem from occurring under different scenarios than those anticipated by the petitioners, nor would they necessarily correct a fugitive dust problem associated with a different type of industry.

The guidance documents issued by DMME are best suited for addressing fugitive dust issues at mining operations. As discussed in the response to comment 26, DMME's guidance states that in reviewing a revision, new permit, or renewal

application, DMME will consider the current or potential situation to determine whether fugitive dust may be a concern. In the event DMME observes a situation where fugitive dust from a permitted operation is an issue, DMME may issue the permittee appropriate enforcement action and possible civil penalties to compel compliance. In addition, if the potential for a continual fugitive dust problem exists, DMME may request by a RON a more comprehensive road maintenance plan from the permittee to address the potential or actual problem. The RON would compel the permittee to develop and implement a more comprehensive plan that will specify the measures the company will take to better control and minimize tracking of material onto public roads and the generation of fugitive dust that results from its operation's traffic.

28. SUBJECT: Fugitive dust in certain localities.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: Photographs illustrating the fugitive dust issue in the area from the communities of Stephens, Appalachia, and Stonega have been provided. The hugely detrimental-to-human-health dust problems in Roda are not isolated to that lone community but are indicative of what is being endured by many coal mining communities in southwest Virginia.

RESPONSE: The commenter's concerns, and those of the affected communities, are appreciated.

29. SUBJECT: Preventive health care.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: Revising the fugitive dust regulations would contribute to preventive health care for Wise County and southwest Virginia's citizens by improving the quality of air that southwest Virginians breathe. Every year, thousands from across the area come to the Wise County fairgrounds for their health care and through the generosity of many institutions and personnel along with equipment and materials, they receive their once a year encounter with healthcare providers. Each of these thousands of people who come receive multiples of procedures, making the treatment encounters many thousands more than the head count. It is one of the most important reasons for you as a board to engage in matters to strengthen the regulations that exist to aid in the prevention of medical conditions that come from breathing and living with excessive amounts of dust and the pollutants contained in it.

The medical community knows full well what the repercussions of this are. I point you to "Mortality in Appalachian coal mining regions: The value of statistical life lost" (Michael Hendryx and Melissa M. Ahem, Public Health Reports, July-August 2009: 124, 7) in which it is said: "Previous research that examined specific forms of mortality in coal mining areas found that chronic forms of heart, respiratory, and kidney disease, as well as lung cancer, remained elevated after adjusting for socioeconomic and behavioral factors. Elevated adjusted mortality occurred in both males and females, suggesting that the effects were not due to occupational exposure, as almost all coal miners are men. These illnesses are consistent with a hypothesis of exposure to water and air pollution from mining activities. There is evidence that the coal mining industry is a significant source of both air and water pollution."

RESPONSE: The control of fugitive dust is indeed necessary to protect public health.

30. SUBJECT: Support for the petition.

COMMENTER: 71 citizens, collected and submitted by Southern Appalachian Mountain Stewards (SAMS)

TEXT: I am writing today to express my support for the petition to create additional regulations to ensure that coal dust is controlled in our communities. I want to thank the Air Board for being an ally to us in our situation. For years now we have suffered from the terrible health and quality of life impacts that the excessive amounts of coal dust has had on our communities. We need a change and we need this to stop. The petition outlines specific actions that will better control the dust and thus improve the quality of life in these coal-producing communities that we call home. Specific actions such as installing and using truck washers, rumble strips or speed bumps, and street sweepers, will make a positive impact on our communities and we urge you to add them to the current regulations. These measures need to be mandatory; our health relies on this and we deserve it. We don't need our homes and lives destroyed by what's happening in our communities. Please help us by making dust control mandatory for trucks and surface mine operations.

RESPONSE: The commenters' concerns are appreciated. As discussed elsewhere, the current regulations of the board are designed to address fugitive dust problems not only in southwest Virginia, but throughout the Commonwealth as well.

These regulations work in conjunction with the regulations of other agencies in order to control dust from trucks and surface mine operations, as well as from a wide range of other source types.

31. SUBJECT: Support for the petition.

COMMENTER: 100 citizen emails sponsored by the Sierra Club

TEXT: My friends in southwest Virginia have asked me to write you in support of the petition they submitted to the board to amend dust regulations to require coal operators to take certain reasonable precautions to prevent the release of dust from coal trucks in residential communities. I have learned about the dust situation in communities like Roda, Virginia and I am very concerned about the impacts of this dust on the health and quality of life for people who must endure such conditions. I have also learned that citizens from southwest Virginia have been asking for almost a year for help in alleviating dust problems in the communities they live in. They appreciate the attention the board has already given this matter, but feel they have not seen actions that fully address the seriousness of the problems. All Virginians deserve to breathe clean air; the proposed dust regulations will help achieve that important goal. Please

take the opportunity presented to the board to adopt strict, enforceable controls to keep dust from invading the communities, homes, and lungs of the people in southwest Virginia.

RESPONSE: The commenters' concerns are appreciated. As discussed elsewhere, the regulations of the board are designed to address fugitive dust problems not only in southwest Virginia, but throughout the Commonwealth as well. We are confident that DEQ's coordinated efforts with DMME will protect the citizens of southwest Virginia, as well as those in other communities throughout the Commonwealth.

REASONS FOR RECOMMENDATION

Below are the reasons for the department's recommendation.

1. The recommendations are not appropriate for the regulations' purpose. The petitioner requests that optional provisions specific to mining in a certain area of the state be added to regulations that are intended to cover a wide variety of sources over the entire state. The Department of Mines, Minerals and Energy (DMME) is the state agency with the legal responsibility and resources for regulating fugitive dust emissions directly related to mining. In contrast, the board's regulations are directed toward a more general federal Clean Air Act mandate to control particulate matter from a variety of sources throughout the Commonwealth. Other, more appropriate means of fugitive dust control not covered by the petitioners' recommendations may exist. In addition, there may be measures more effective for other industries in other areas of the state that are not addressed by the recommendations.
2. The existing state regulations and guidance address fugitive dust by providing a listing that includes, but is not limited to, certain reasonable precautions. A rulemaking to add items to the current list of optional reasonable precautions is unnecessary and the existing regulation provides the necessary flexibility to cover a wide variety of sources over the entire state.
3. Adopting the recommendations would require a full regulatory process, which is very costly in terms of time and expense. Such costs would be borne not only by the department, but by other state agencies as well.

It is recommended that the board deny the petitioner's request for the reasons set forth above.

The Board book contains the following documents:

TAB B

Petition for Rulemaking, Fugitive Dust – March 2011

1. June 4, 2010 – Fugitive Dust Petition for Rulemaking – Board Action
2. November 16, 2009 - Petition to Amend Existing Regulations from Southern Appalachian Mountain Stewards and Sierra Club

TAB C

Petition for Rulemaking, Fugitive Dust – March 2011

DEQ Material

1. Agenda Item – Petition for Rulemaking, Fugitive Dust, March 2011
2. June 2010 DEQ Powerpoint Presentation (Bazyk) to SAPCB
3. May 27, 2011 Email Re: Roda Options
4. May 21, 2010 Memorandum from Michael Dowd to Hullahen Moore
5. April 23, 2010 Memorandum from Melanie Davenport to Hullahen Moore
6. March 26, 2010 Powerpoint Presentation from Lora Werner to SAPCB
7. March 12, 2010 Letter from Bradley Lambert to Dallas Sizemore
8. March 5, 2010 Letter from Dallas Sizemore to Bradley Lambert
9. January 4, 2010 Letter from Dallas Sizemore to Bradley Lambert
10. Memorandum of Agreement between DMME and DEQ – December 9, 2009
11. November 1, 2009 DMME Guidance Memorandum No. 29-09
12. November 1, 2009 DMME Procedure No. 3.3.18
13. November 2009 DEQ Powerpoint Presentation (Bazyk) to SAPCB
14. September 2009 DEQ Powerpoint Presentation (Bazyk) to SAPCB
15. September 2009 DEQ Powerpoint Presentation (Turner) to SAPCB
16. September 1, 2009 Letter from Sierra Club and SAMS to SAPCB and DEQ
17. August 26, 2009 Memorandum from Charles Turner to Michael Dowd – Report on Monitoring Study in Roda, Virginia
18. May 11, 2009 Letter from David Paylor to Howard Frumkin, CDC
19. February 12, 2009 Email from DMME Re: DMLR & Va. State Police Response

TAB D

Petition for Rulemaking, Fugitive Dust – March 2011

Cumberland Resources Corporation

1. Ambient Dust Characterization for Roda Road, VA State Route 685, August 2009

2. February 15, 2011 Letter from Skelly and Lop on behalf of Cumberland Resources Corporation
3. February 10, 2011 Letter from Schwarze Industries

TAB E

Petition for Rulemaking, Fugitive Dust – March 2011

Sierra Club/SAMS Material

January 24, 2011 Letter from Southern Appalachian Mountain Stewards and Sierra Club transmitting:

1. Viney Aneja. 2009. Characterization of Particulate Matter (PM10) in Roda, Virginia
2. Viney, Aneja. April 24, 2009. Power Point Presentation: Characterization of Particulate Matter (PM10) in Roda, Virginia
3. Viney Aneja. November 20, 2009. Power Point Presentation: Analysis of Current Efforts to Study and Remediate Particulate Matter (PM10) in Roda, Virginia
4. Lora Werner, Robert Helverson. March 2010. Letter Health Consultation Review of Ambient Air Monitoring Data. Summary of Roda Air Exposures. Prepared by: ATSDR
5. Dwight Flammia, Rebecca LePrell. March 25, 2010. Roda Update from Office of Epidemiology
6. Lora Werner. April 26, 2010. Addendum to March 2010 Letter Health Consultation, Review of Ambient Air Monitoring Data, Summary of Roda Air Exposures
7. Sierra Club, Southern Appalachian Mountain Stewards. June 3, 2010. Options Available to the Virginia Air Pollution Control Board to Address the Fugitive Dust Problem in Southwest Virginia
8. Viney, Aneja, Aaron Isherwood, Peter Morgan. August 2010. Characterization of Particulate Mater (PM10) Related to Surface Coal Mining Operations in Appalachia
9. October 2010. Photos of Coal Mining Trucks Bypassing Washer
10. November 2010. Citizen Truck Counting Form
11. Virginia DMME. November 2010. Air Pollution Control/Fugitive Dust Control Plans
12. Sierra Club, Southern Appalachian Mountain Stewards. 2010. Petition to the Virginia Air Pollution Control Board to Amend Existing Regulations
13. January 2011. Copies of Dust and Haul Road Complaints

General Permit concerning Qualified Energy Generator for a Biomass Pilot Test Facility (9VAC5 Chapter 520, Rev. Cg) - Public Participation Report and Request for Final Board Action: **The General Assembly adopted legislation which mandates the Board develop an expedited process for issuing any permit that the Board is required to issue for the construction or operation of a "qualified energy generator" provided that the generator is not subject to the major new source review program. The statute defines a qualified energy generator as "a commercial facility located in the Commonwealth with the capacity annually to generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product, that is generated or produced from biomass, and that is sold to an unrelated person or used in a manufacturing process."** The statute also provides a definition for "biomass" and "expedited process."

The Department is requesting approval of draft final general permit that meet state statutory and regulatory requirements. Approval of the general permit will ensure that the Commonwealth will be able to implement the general permit concerning qualified energy generator for a biomass pilot test facility in an efficient and effective manner.

To solicit comment from the public on the proposed general permit, the Department issued a notice that provided for receiving comment during a comment period and at a public hearing. The department also requested specific comment on three issues: (i) the definition of qualified energy generator pertaining to the "capacity annually to generate no more than 5 megawatts (MW) of electricity", (ii) the 12 month timeframe for testing, and (iii) whether there is a need to reevaluate fuel periodically. Comments were received pertaining to the first two issues; no comments were received pertaining to the last item.

The summary and analysis of public testimony follows: Each issue is discussed in light of all of the comments received that affect that issue.

1. SUBJECT: Support for pilot test facility approach.
COMMENTER: Wayne F. Pryor, President, Virginia Farm Bureau

TEXT: First, Virginia Farm Bureau appreciates the department's recognition of agriculture's future role in biomass energy and invitations to individual farmers and Farm Bureau to participate on the Technical Advisory Committee Concerning Qualified Energy Generators Using Biomass (TAC). The charge to develop a general permit program for multiple feed stocks and novel technologies was certainly a challenge for the Department. We applaud the department for focusing the new general permit on pilot test facilities as recommended by the TAC. There should be ample opportunity to expand the general permit program to include other facility types once the application of a corresponding technology and feedstock become more commonplace, and industry and the agency gain experience and air quality data.

RESPONSE: The department appreciates the comment.

2. SUBJECT: Support for pilot test facility approach.

COMMENTER: Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council

TEXT: The Council's members support the production of alternative energy generation as a means to diversify energy portfolios and the agribusiness economy as well as efforts to minimize regulatory requirements or other barriers which may inhibit the successful growth of alternative energy generation. While this General Permit for a Biomass Pilot Test does not fully address all regulatory barriers for all alternative energy production facilities, it does set a reasonable process and General Permit for the use of pilot project testing, a critical step in the right direction for encouraging alternative energy production.

RESPONSE: The department appreciates the comment.

3. SUBJECT: Agency web page

COMMENTER: Wayne F. Pryor, President, Virginia Farm Bureau

TEXT: We wish to recognize another positive outcome of the TAC and applaud the Department's posting of the "Air Permitting Requirements for Biomass" fact sheet on its website. The fact sheet provides information in layman terms to the public and assists those interested in pursuing a biomass energy project.

RESPONSE: The department appreciates the comment.

4. SUBJECT: Support for the general permit.

COMMENTER: Wayne F. Pryor, President, Virginia Farm Bureau

TEXT: The Virginia Farm Bureau Federation supports the proposed regulation, 9VAC5-520, Biomass Energy Generator General Permit for a Pilot Test Facility, for numerous reasons. The proposed regulation appears to address air quality concerns while allowing the testing and commercial application of biomass energy technologies and feed stocks. The proposed regulation is both technology and feed stock neutral which is important for this new potential industry. The proposed regulation allows interested persons to obtain a permit for testing novel technologies and new biomass feed stocks and continuing operations when appropriate. The proposal allows a permittee to reapply for permit coverage using a different feed stock or to apply for appropriate permit coverage under a different air permit program as necessary to continue facility operations. The proposal does not preclude a person from seeking coverage under an individual air quality permit. And last, the proposed regulation is consistent with the consensus recommendation reached by Department staff and TAC members.

RESPONSE: The department appreciates the comment.

5. SUBJECT: Technical corrections.

COMMENTER: Wayne F. Pryor, President, Virginia Farm Bureau

TEXT: We ask the Department to please review the references to 9VAC5-520-230 in both the proposed 9VAC5-520-100 C and 9VAC5-520-210 A. It is our understanding that in each instance the proposed reference is an error and that a revised reference to 9VAC5-20-230, Certification of documents, may be appropriate.

RESPONSE: Corrections have been made to the regulation.

6. SUBJECT: Support for the general permit.

COMMENTER: Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council

TEXT: The Virginia Agribusiness Council represents the agriculture and forest producers, suppliers, marketers, processors, and commodity associations who make up the number one industry in Virginia. As the "unified voice of Virginia agriculture and forestry" the Council has a combined membership of over 40,000 persons. As you are aware, our members are interested in the issuance of this regulation and believe that the streamlined general permit process that will come as a result of this action will help to further encourage the generation of alternative energy from agricultural and forest products.

RESPONSE: The department appreciates the comment.

7. SUBJECT: Definition of a "qualified energy generator."

COMMENTER: Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council

TEXT: The Council's representative on the TAC reports that the TAC agreed that the regulations should limit the rated capacity of the generator, believing it too cumbersome and confusing to pursue the alternative, which is to limit the total amount of electricity in a 12 month period.

RESPONSE: The definition of “qualified energy generator” was clarified as a result of discussions in the TAC. The department appreciates the comment.

8. SUBJECT: Expand permit to include nonelectric generating entities.

COMMENTER: Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council

TEXT: Additionally, we encourage the department to provide an option for nonelectricity generating entities to participate in the Pilot General Permit, such as a conversion factor that equals the established limit of 5 MW electricity.

RESPONSE: This suggestion is not incorporated into the regulation as the enabling legislation only addresses qualified energy generators and provides the definition as to what a qualified electric generator is. No changes have been made to the proposal as a result of this comment.

9. SUBJECT: Extend time frame for testing.

COMMENTER: Katie K. Frazier, Vice President, Public Affairs, Virginia Agribusiness Council

TEXT: The Council requests that the department extend general permits for facilities continuing testing beyond the 12 month permit issuance by granting a variance to allow for a limited amount of additional time for testing. This will allow projects that may run into complications during their 12-month window of piloting an opportunity to continue their efforts and provide the department the necessary information to apply for a general permit, if applicable.

RESPONSE: A balance must be achieved between permitting a facility to operate to conduct testing and ensuring that a facility doesn’t operate for a significant time period if it is determined that it is a major source or it has significant toxic emissions. The general permit is structured only to allow a facility sufficient time to conduct emissions testing to determine if the facility is above or below the permitting thresholds limits. As proposed, section 9VAC5-520-180 A stipulated a 12-month timeframe to have all testing and reporting completed, including fuel testing; however, the 12-month clock does not start until the actual startup date. As proposed, section 9VAC5-520-180 H stipulated that the facility shall perform stack testing and visible emissions testing within 60 days “after achieving the maximum production rate at which the facility will be operating but in no event later than 180 days after startup...”. The time allowed for the actual stack testing, (180 days) is consistent with current permitting procedures; therefore, this section has not been changed. However, fuel testing must occur prior to testing which is not normally required for permits; therefore, an additional 3 months has been provided in section 9VAC5-520-180 A to increase the time from 12 to 15 months to complete the entire testing process.

10. SUBJECT: Generator size.

COMMENTER: Jon R. Patrick

TEXT: Why is the size of the generator limited to 5 megawatts?

RESPONSE: The limit on the size of the generator is specified in the enabling legislation.

11. SUBJECT: Generator size.

COMMENTER: Peter Thomas

TEXT: When speaking with the department staff about the Biomass Energy Generator General Permit for a Pilot Test Facility, I was told that the TAC recommended that the generator label should be 5 MW, yet when reading the regulation, the energy limit is 5 MW per year, indicating a generator label of 570.78 kW (Proof: 5,000,000 kWh per year / 8,760 hours per year). Which figure is actually being proposed? After all, there is a huge difference.

RESPONSE: The TAC decided to clarify the definition of “qualified energy generator” by stating the following in the regulation: “For the purposes of this chapter the phrase “capacity annually to generate no more than 5 MW of electricity” shall mean a nameplate capacity equal to or less than five MW that is operated in conjunction with a biomass pilot test facility.” Therefore, 5 MW means a nameplate rating, not a yearly rating.

12. SUBJECT: Generator size.

COMMENTER: Peter Thomas

TEXT: I see no problem with interpreting 5 MW as the nameplate capacity of the generator, but there is conflicting wording within the definition of “qualified energy generator”. Subsection I states “with the capacity annually to generate no more than five megawatts (MW) of electricity...” yet the last sentence states: “for the purposes of this chapter, the phrase “capacity annually to generate no more that 5 MW of electricity” shall mean a nameplate capacity equal to or less than 5 MW that is operated in conjunction with a biomass pilot test facility.” I would recommend that the wording be reworked to include the phrase “5 MW nameplate capacity.” I would recommend that the last sentence within the definition be allowed to remain.

RESPONSE: The first sentence in the definition of qualified energy generator is taken directly from legislative language. It is for that reason the clarifying language was added to the end of the definition. No changes have been made to the proposal as a result of this comment.

13. SUBJECT: Support for fuel testing.

COMMENTER: Jon R. Patrick

TEXT: I love the idea of testing the biomass prior to usage as fuel to estimate expected emissions and then test stack emissions to verify. That's the smart way to learn.

RESPONSE: The department appreciates the comment.

14. SUBJECT: Fuel switching.

COMMENTER: Stephen Versen, VA Department of Agriculture and Consumer Services (VDACS)

TEXT: We believe the permitting regulation should take into account the potential that an applicant might use different feedstocks in the conversion facility at different times during the year and that it should make the switching between allowable feedstock as easy as is reasonable. One could imagine a scenario where a farmer would use wheat straw in the spring, corn in the fall and woodchips in the winter. Provided that each feedstock to be used has been approved for use in the conversion facility, switching between them should not require additional, significant submissions by the applicant.

RESPONSE: In this scenario, the department would suggest that the facility apply for the biomass general permit and test all 3 different feedstocks. If the conclusions of the test data results in an exemption for the facility, then the facility does not need a permit. If the conclusions of the test data result in an Article 6 permit for the facility, then switching between the feedstocks is not a problem because all feedstock options will be included in the permit. No changes have been made to the proposal as a result of this comment.

15. SUBJECT: Fuel switching.

COMMENTER: Peter Thomas

TEXT: I fully agree with Steve Versen's comments that a farmer or the operator of a biomass energy generation facility should be able to switch between approved fuels with minimal requirements imposed.

RESPONSE: Please see response to comment number 14.

16. SUBJECT: Definition of "biomass."

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: Based upon the information provided in these comments, Treated Wood Council recommends that the department amend subparagraph #4 of the proposed definition of "biomass" and add subparagraphs #8 & 9, as follows:

" 'Biomass' means organic material that is available on a renewable or recurring basis, including: ...

4. solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding ~~pressure-treated, chemically treated or painted wood wastes, and wood contaminated with plastic;~~

8. pressure-treated dimensional lumber that does not contain arsenic or chromium; and

9. other pressure-treated wood biomass, but only at facilities that (a) possess the technology to satisfy all pertinent environmental requirements and (b) obtain the necessary permits for such use."

RESPONSE: The term "biomass" is defined in statute. The statutory definition specifically prohibits the use of pressure treated, chemically treated or painted wood wastes or wood contaminated with plastic. No changes have been made to the proposal.

17. SUBJECT: Treated wood beneficial to the goal of reducing greenhouse gas emissions.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: In comparison to the standard landfill disposal pathway, the use of treated wood biomass for renewable energy (or for the production of other products) offers societal, economic, and other benefits, including greater overall energy efficiency, less reliance on imported energy, lower GHG emissions, less use of landfill capacity, more U.S. manufacturing jobs, and enhanced use of sustainable American forest products. This is an outcome that the department should fully support. However, the proposed rule will have the opposite effect.

RESPONSE: Please see response to comment number 16.

18. SUBJECT: Treated wood is a valuable heat-content commodity.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: It is important to note that the use of the treated wood biomass as a fuel source provides all the legitimate energy value benefits of those realized by burning "clean sawn lumber." In fact, the benefits in many cases are greater, due to higher BTU value. Thus, the treated wood product should be considered as a valuable commodity with the same or greater potential as a fuel when compared to "clean sawn lumber."

Legitimate use of treated wood as fuel requires application of appropriate combustion/process equipment, controls, and permit requirements. As with conventional fuels, combustion, process and control equipment and operating permits are tailored to the intended fuel. For example, a wood-fired unit cannot switch to coal or tire-derived fuel without plant and permit modifications.

It is an axiom of practice that “clean” fuel can burn dirty and “dirty” fuel can burn clean. The important point is that the whole system of fuel, combustion, process and control equipment, operational procedures, and permit requirements needs to be optimized for efficient energy recovery with minimal emissions. The presence of a preservative alone is not a justification for rejecting a treated wood product as a fuel.

RESPONSE: Please see response to comment number 16.

19. SUBJECT: Treated wood fuel is managed as a valuable commodity.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: Energy producers recognize the benefit of using treated wood biomass as a renewable energy resource. Treated lumber removed from decks, fences, or buildings is often managed as construction and demolition (C&D) material, and more and more of this is reclaimed at recycling facilities that separate materials based on market value and potential uses. Such facilities typically separate out treated and untreated wood together, grind it, and sell the product as fuel or utilize it on-site to generate power. Separating treated lumber from untreated lumber is sometimes done but is difficult and expensive.

RESPONSE: Please see response to comment number 16.

20. SUBJECT: Treated wood fuel has meaningful heating value.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: Untreated wood biomass typically contains 50 percent moisture content (dry wood basis). Treated wood, when removed from service, has a moisture content of approximately 20 percent (dependent on the environment in which it was used). The reduced moisture content of treated wood increases BTU value per pound of biomass product. Furthermore, wood preservatives do not reduce, and some add to, the heat value of wood.

RESPONSE: Please see response to comment number 16.

21. SUBJECT: Preservatives in treated wood do not violate air pollution standards from permitted facilities: creosote preserved wood.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: Creosote has been used as a wood preservative for over 100 years. Creosote is derived from coal tar, which is produced by condensing organic vapors from baking coal in ovens at high temperature and in the absence of oxygen to make coke. Creosote is produced from coal tar by fractional distillation, similar to production of diesel oil from crude oil. Creosote is a hydrocarbon composed mainly of carbon (about 80 percent) and hydrogen, similar to petroleum products. However, creosote differs by being composed mostly of polycyclic aromatic hydrocarbon (PAH) compounds, meaning the molecules are groups of carbon-hydrogen benzene rings rather than linear chains of carbon-hydrogen. Like petroleum oil, creosote has high fuel value at approximately 15,000 BTU/pound.

Concern about burning creosote treated wood for energy relates to the thought that PAH compounds of creosote would be emitted. While that is a real concern for open burning with poor combustion control, test data document that PAH releases from creosote treated wood burned in industrial or commercial boilers are insignificant. In fact, because used creosote treated wood is typically drier than green biomass fuel and because it contains approximately 5 to 10 percent creosote, creosote treated wood burns hotter and with less emissions of PAH and other products than “clean” biomass.

RESPONSE: Please see response to comment number 16.

22. SUBJECT: Pentachlorophenol treated wood.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: Stack tests completed in Mississippi documented that greater than 99.99 percent of pentachlorophenol is effectively destroyed by combustion in a conventional wood fired boiler. Up to approximately 50 percent of the chlorine in the fuel was emitted as hydrochloric acid (HCl). Typical emission would be lower since flue gas acid treatment technologies, such as scrubbers, are effective in removing HCl and are commonly used at industrial combustion facilities.

Pentachlorophenol treated wood combustion need not cause emissions of polychlorinated dibenzodioxins and dibenzofurans (PCDD/DFs). A study for the EPA tested emissions from a boiler co-firing wood biomass with penta and creosote residuals. No CDF or CDD were detected in the air emissions. The California Air Resources Board determined, based on the above and other studies, that “...the results indicate quite strongly that when combusted with sufficient oxygen and at a low enough concentration of PCP in the fuel, PCDDs and PCDFs are not emitted from small-scale combustion of treated wood wastes in industrial boilers using modern pollution control equipment such as baghouses and precipitators.”

PCDD/DFs result as products of incomplete combustion with chlorine in fuel. EPA’s National Dioxin Study notes that PCDD emissions from coal combustion increased with the addition of chlorine. The study further states, “In order to destroy PCDDs or prevent their formation, the combustion efficiency must be high. This requires a combination of high temperatures, available oxygen, high heating value fuel, and long residence times.” These same conditions are required for efficient combustion of most conventional solid fuels. Therefore, penta-treated wood should be considered as an acceptable renewable energy resource.

RESPONSE: Please see response to comment number 16.

23. SUBJECT: Waterborne treated wood containing arsenic, chromium and/or copper.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: Data from a report that reviewed fuel and emissions data for clean (untreated) wood, creosote and penta treated wood, and C&D wood waste has been used to calculate emissions of metals relative to fuel-metal concentrations. The facilities studied were relatively modern and included electrostatic precipitator or fabric filter controls. Approximately 99.99 percent of metals from treated wood will remain with the ash waste stream. Resulting emissions are generally similar to those for conventional fuels. Constituents in fuels are not contaminants if they are not emitted when the treated wood is burned as fuel. Such treated wood, when combusted in an appropriate and permitted facility, should be considered as an acceptable renewable energy resource.

RESPONSE: Please see response to comment number 16.

24. SUBJECT: Waterborne treated wood containing copper.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: Newer waterborne preservative formulations, such as alkaline copper quaternary (ACQ) and copper azole, utilize copper as the primary active ingredient mixed with low concentration carbon based co-biocides. As noted above, during combustion, very little if any copper is emitted and carbon-based components are destroyed. Further, neither copper nor the carbonbased biocides are hazardous air pollutants, so such treated wood does not contain “contaminants.” Therefore, copper-treated wood should be considered as an acceptable renewable energy resource.

RESPONSE: Please see response to comment number 16 above.

25. SUBJECT: Copper naphthenate treated wood.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: Copper naphthenate preservative consists of copper dissolved in naphthenic acid. The preservative is diluted in diesel oil to treat industrial products such as rail ties, utility poles and bridge timbers. It may also be diluted in mineral spirits or be prepared in a water-borne formulation for pressure application or for use as a field-applied treatment.

Naphthenic acid is a natural constituent in crude oil that boils in the kerosene/diesel fraction during crude oil distillation. As such, it is a hydrocarbon with fuel value well in excess of wood alone. When copper naphthenate treated wood is burned, the copper, which is not a hazardous air pollutant, remains with the ash while the remaining carbon-based constituents will contribute to and be destroyed by combustion.

Therefore, copper naphthenate-treated wood should be considered as an acceptable renewable energy resource.

RESPONSE: Please see response to comment number 16.

26. SUBJECT: Wood treatments containing boron.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: Wood treated with water-borne preservative or fire-retardant solutions including boron or borates are commonly used in building construction. Some are stained to identify the wood product as treated, but the preservative itself does not impart color. Thus, identifying wood that is treated with boron may be difficult. A recent trend for railroad ties is to pre-treat the wood ties with water-borne borate solution and then to over-treat with creosote. This has been shown to provide significant performance improvement for ties installed in high decay hazard locations. Boron is not listed as a federal Clean Air Act hazardous air pollutant. Boron in wood does not interfere with wood combustion or significantly impact emissions. A study of emissions resulting from combustion of various treated wood fuels, including boron treatments, concluded that “Very good combustion properties were also found for ...[boron treated wood]”. The test data emissions of carbon monoxide and NO_x were of similar or lower levels for boron containing wood fuel than for untreated wood fuel. Therefore, boron-treated wood should be considered as an acceptable renewable energy resource.

RESPONSE: Please see response to comment number 16.

27. SUBJECT: Treated wood biomass may be used as ingredient to produce synthetic gas.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: While the most common current reuse of treated wood is combustion as fuel, other technologies are evolving that do or will utilize treated wood as an ingredient to make other products. The following are some examples.

Energem is now completing a commercial scale biofuels plant in Westbury, Ontario that is producing syngas from treated wood utility poles and will this year begin production of ethanol. Energem is planning to begin construction on a larger ethanol plant in Edmonton, Alberta, using the same technology. Also, Energem is now completing design of a biofuel plant to be built in Pontotoc, Mississippi, that will accept 190,000 tons of unsorted municipal solid waste per year. Approximately 10 million gallons of ethanol and other green chemicals will be produced annually. The Mississippi project has been selected to receive \$50 million from the U.S. Department of Energy. In these cases, legitimate alternative fuels will be produced from the processing of secondary materials. At least a portion of the

secondary material will likely be treated wood. If treated wood were required to be separated from other wood in the municipal waste stream, higher costs, less fuel, more landfill space, and more methane GHG emission will result. American Cogeneration, LLC has licensed technology from the Energy and Environmental Research Center at the University of North Dakota to gasify wood biomass, including creosote treated cross-ties, to produce syngas for heat and power production. A plant utilizing out of service ties from the Canadian Pacific Railway is under construction.

RESPONSE: Please see response to comment number 16.

28. **SUBJECT:** Plastic end-tags on treated wood.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: When sold, treated wood often is labeled with a plastic end-tag, which lists the type of preservative used. The presence of the end-tag is useful for determining the preservative used, and should not be the reason to disallow the wood as an eligible "biomass."

RESPONSE: Please see response to comment number 16.

29. **SUBJECT:** Significant loss if treated wood is not permitted as a fuel.

COMMENTER: Jeffery T. Miller, President and Executive Director, Treated Wood Council

TEXT: There is a substantial current and larger potential market, with associated societal and environmental benefits, for the use of treated wood biomass for energy recovery in Virginia that will be prohibited by the proposed regulations.

RESPONSE: Please see response to comment number 16.

30. **SUBJECT:** Biomass definition; "forest related materials"

COMMENTER: Monte C. Simpson, Public Affairs Manager, Weyerhaeuser Company

TEXT: Weyerhaeuser recommends amending the definition to include the term "all trees" under Forest related materials and to delete the phrase "low commercial value materials" because it is ambiguous.

RESPONSE: The term "biomass" is defined in statute. No changes have been made to the proposal.

31. **SUBJECT:** Department of Environmental Quality to encourage the Virginia General Assembly to repeal biomass limitations as identified in Chapter 744, Section 56-585.2

COMMENTER: Monte C. Simpson, Public Affairs Manager, Weyerhaeuser Company

TEXT: During the 2009 legislative session the General Assembly amended the "Renewable Energy" definition in Chapter 744, Section 56-585.2 of the Virginia Code to limit forest-related material that is eligible for consideration in the state's RPS program. The statute states:

"Utilities participating in such program shall collectively, either through the installation of new generating facilities, through retrofit of existing facilities or through purchases of electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting RPS goals, excluding such fuel used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program."

RESPONSE: The comment addresses legislation not germane to the general permit. No changes have been made to the proposal.

SUMMARY OF PROPOSED GENERAL PERMIT

Below is a brief summary of the substantive provisions of the general permit that were originally proposed for public comment.

1. Definitions used in the regulation are identified.
2. General provisions are established which cover the overall basis, applicability and general requirements of the general permit.
3. Procedures for obtaining the general permit are described and provide requirements for granting an authorization to operate under the general permit, applications for coverage under the general permit, required information for initial applications, authorization to construct and test, and transfer of authorization to construct and test.
4. General permit terms and conditions are established. They include process requirements, a permit emissions threshold, a testing schedule, compliance determination and verification, recordkeeping and reporting requirements and compliance and enforcement provisions.
5. The permit requires a certified fuel test for all feed-stock used in the process as well as a certified stack test.
6. A source is exempt from permitting if the uncontrolled emissions are below the permitting emission threshold limits listed in the regulation.

SUMMARY OF CHANGES TO PROPOSED GENERAL PERMIT

Below is a brief summary of the substantive changes the Department is recommending be made to the proposed general permit.

1. Add the reference “9VAC5-520-190 B, C, and D” to subsection 9VAC5-520-180 H for clarity.
2. Change the phrase “non- visible emissions evaluation” to “certified stack tests” for clarity.
3. Changed the time frame to complete testing from 12 months to 15 months.
4. Made technical corrections or changes to provide clarity.

Ambient Air Quality Standard for SO₂ (Rev. H10) - Request for Board Action on Exempt Final Regulation: On June 22, 2010 (75 FR 35520), EPA issued a regulation revising the NAAQS for sulfur oxides (SO_x) measured as sulfur dioxide (SO₂). The current primary annual ambient air quality standard remains 80 micrograms per cubic meter (0.030 parts per million) and the current primary 24-hour ambient air quality standard remains 365 micrograms per cubic meter (0.14 parts per million). A new primary 1-hour annual ambient air quality standard has been added at 75 parts per billion (ppb). The secondary ambient air quality standard remains at 1,300 parts micrograms per cubic meter (0.50 parts per million). The new 1-hour annual primary standard is met when the three-year average of the annual (99th percentile) of the daily maximum 1-hour average concentrations is less than or equal to 75 ppb, as determined in accordance with a new Appendix T of 40 CFR Part 50. The new standard became effective on August 23, 2010. The current primary 24-hour and annual standards will no longer apply to an area one year after the designation of that area by EPA under the new standard.

Chapter 30 contains the ambient air quality standards for the specific criteria pollutant standards set out in 40 CFR Part 50. Therefore, this chapter is the action effectively implementing the EPA requirements.

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.

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.

SUMMARY OF AMENDMENTS TO REGULATION

1. Appendix A-1 to 40 CFR Part 50 has been added to the federal documents incorporated by reference list. [9VAC5-20-21 E 1 a (1) (a), page 2]
2. Appendix A to 40 CFR Part 50 has been renamed as Appendix A-2 in the federal documents incorporated by reference list. [9VAC5-20-21 E 1 a (1) (b), page 2]
3. Appendix T to 40 CFR Part 50 has been added to the federal documents incorporated by reference list. [9VAC5-20-21 E 1 a (1) (u), page 3]
4. The new standard for SO₂ has been added. [9VAC5-30-30 A 3, page 11]
5. Provision for the existing primary standards to no longer apply to an area has been added. [9VAC5-30-30 A 4, page 11]
6. Use of the reference methods in Appendices A-1 and A-2 to 40 CFR Part 50 has been specified. [9VAC5-30-30 C, page 12]
7. Data requirements for demonstrating attainment of the new standard have been added. [9VAC5-30-30 D, page 12]

High Priority Violators (Hpv's) For The First Quarter, 2011

NOV's Issued from October through December 2010

DEQ Region	Facility	Brief Description	Status
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<p>PRO</p>	<p>Honeywell International Inc.</p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50232</p> <p>SIC 2869, 2899, 2819 Industr. Organic Chemical NEC, Chemical & Chem. Prep, NEC, Industrial Inorganic Chemicals NAICS 325199 Chemical Mfg.</p>	<p>Discovery date – 04/01/2010</p> <p>Alleged violations:</p> <p>Honeywell was unable to provide records documenting opacity observations for 12/2009, 1/2010, and 2/2010 for a number of various processes.</p>	<p>NOV - Issued 10/26/2010</p> <p>Additional Information:</p>
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CO's In Development – Previously Reported NOV's

<p>NRO</p>	<p>GenOn Mid-Atlantic LLC / GenOn Potomac River LLC (formerly Mirant Mid-Atlantic LLC / Mirant Potomac River LLC)</p> <p>Alexandria, Virginia</p> <p>Registration No. 70228</p> <p>SIC 4911 Electrical Services NAICS 221112 Utilities – Electric Power Generation, Transmission and Distribution</p>	<p>Discovery dates:</p> <p>1st NOV – 02/04/2010 2nd NOV – 03/08/2010 3rd NOV – 07/08/2010</p> <p>Alleged violations:</p> <p>Failure to maintain and operate in a manner consistent with air pollution control practices for minimizing emissions.</p> <p>1st NOV Failure to provide all required data in quarterly Continuous Emissions Monitoring (CEM) Report.</p> <p>Exceeded permitted limits for particulate matter (PM) emissions (including condensable).</p> <p>2nd NOV Exceeding the visible emissions limit of 20% opacity.</p> <p>3rd NOV Exceeding the visible emissions limit of 20% opacity.</p>	<p>1st NOV - Issued 04/06/2010 2nd NOV - Issued 05/12/2010 3rd NOV - Issued 07/28/2010</p> <p>CO - <i>In Development</i></p> <p>Additional Information:</p> <p>On December 13, 2010 Mirant and RRI Merged to form GenOn.</p>
<p>NRO</p>	<p>Kinder Morgan Southeast Terminals LLC – Newington Terminal</p> <p>Newington, Virginia</p> <p>Registration No. 70087</p> <p>SIC 5171 Petroleum Bulk Stations & Term</p>	<p>Discovery dates – 04/14/2010</p> <p>Alleged violations:</p> <p>Exceeded annual allowable throughput of reformulated gasoline (RFG) as per the facility's minor NSR permit.</p>	<p>NOV - Issued 05/10/2010 CO - <i>In Development</i></p> <p>Additional Information:</p>

	NAICS 424710 Petroleum Bulk Stations & Terminals		
VRO	Neuman Aluminum Impact Extrusion, Inc. Waynesboro, Virginia Registration No. 81346 SIC 3411 Metal Cans NAICS 332431 Fabricated Metal Product Manufacturing	Discovery date: 05/10/2010 Alleged violation: Failure to meet trichloroethylene (TCE) emissions limit by the May 3, 2010 compliance deadline.	NOV - Issued 09/13/2010 CO - <i>In Development</i> Additional Information: On October 13, 2010 DEQ received response from the Facility outlining actions taken to ensure compliance.
NRO	King George Landfill, Inc. King George, Virginia Registration No. 40903 SIC 4953 Refuse Systems NAICS 562212 Administrative and Support Waste Management	Discovery date: 09/07/2010 Alleged violation: Test Results demonstrate excess SO2 emissions from the three Solar Centaur Combustion Turbines.	NOV - Issued 09/15/2010 CO - <i>In Development</i> Additional Information:

CO's Issued From October Through December 2010.

	NONE	
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EPA NOV's Issued from October through December 2010.

<i>**The inspections at the Hopewell facilities were conducted as part of EPA Region III's Hopewell Geographic Initiative, which is an enforcement strategy created, in part to better understand the transfer of volatile organic compounds and hazardous air pollutants between facilities in the Hopewell geographic air shed.</i>			
**EPA	DuPont Teijin Films	Alleged violations: 2nd NOV – Further violations of 40 CFR 63 Subpart JJJ (Polymers and Resins Group IV), and Subpart H (Equipment Leaks), that include improper use of emission debits and credits; failure to provide certifications, reports and plans; and improper emission controls.	EPA 2nd NOV - Issued 12/7/2010 Additional Information: NOV Meeting was held with EPA, DEQ, and the Responsible Party on 2/2/2011.
**EPA	Hopewell Regional Wastewater Treatment Facility (WWTP)	Alleged violations: Violations of 40 CFR 63 Subpart VVV (Publicly Owned Treatment Works - POTW) and Reasonably Available Control Technology (RACT) for failure meet control requirements.	EPA 2nd NOV - Issued 12/17/2010 Additional Information: NOV Meeting with EPA, DEQ, and the Responsible Party is being scheduled.

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

<p>**EPA</p>	<p>Ashland Aqualon Functional Ingredients (Hercules)</p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50363</p> <p>SIC 2869 Industr. Organic Chemical NEC NAICS 325199 Chemical Mfg.</p>	<p>Discovery date – 11/08/2007</p> <p>Alleged violations:</p> <p>Alleged violations of the Cellulose MACT (40 CFR 63 Subpart UUUU) and the associated Leak Detection and Repair (LDAR) program.</p>	<p>EPA NOV - Issued 04/02/2009</p> <p>Additional Information:</p> <p>NOV Meeting was held with EPA, DEQ, and the Responsible Party on 7/8/09.</p>
<p>**EPA</p>	<p>Hopewell Regional Wastewater Treatment Facility (WWTP)</p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50735</p> <p>SIC 4952 Sewage Systems NAICS 221320 Utilities, Water, Sewage and Other Systems</p>	<p>Discovery dates – 11/07/2007</p> <p>Alleged violations:</p> <p>Violations of 40 CFR 63 Subpart VVV (Publically Owned Treatment Works - POTW) and Reasonably Available Control Technology (RACT) that include failure the to provide appropriate notification, meet control requirements, conduct inspections and monitoring, properly calculate emission values.</p>	<p>NOV - Issued 07/06/2009</p> <p>Additional Information:</p> <p>NOV Meeting was held with EPA, DEQ, and the Responsible Party on 9/23/09.</p>
<p>**EPA</p>	<p>DuPont Teijin Films</p> <p>Hopewell, Virginia Chesterfield County</p> <p>Registration No. 50418</p> <p>SIC 2821 Plastic Material/Synthetic resins NAICS 325211 Chemical - resin, Synthetic rubber, and artificial synthetic fibers.</p>	<p>Discovery dates – 04/18/2008</p> <p>Alleged violations:</p> <p>1st NOV - Violations of 40 CFR 63 Subpart JJJ (Polymers and Resins Group IV), Subpart H (Equipment Leaks), and Subpart EEEE (Organic Liquid Distribution (Non-Gasoline) that include improper use of emission debits and credits; failure to provide certifications, reports and plans; improper emission controls; and failure to identify and repair leaking components.</p>	<p>EPA 1st NOV - Issued 07/17/2009</p> <p>Additional Information:</p> <p>3/1/2010 – EPA requested mor e information via 114(a) of the CAA.</p> <p>NOV Meetings have been held with EPA, DEQ, and the Responsible Party on 9/10/09 and 2/2/2011.</p>
<p>**EPA</p>	<p>Honeywell International Inc.</p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50232</p> <p>SIC 2869, 2899, 2819 Industr. Organic Chemical NEC, Chemical & Chem. Prep, NEC,</p>	<p>Discovery date – 11/06/2007</p> <p>Alleged violations:</p> <p>1st NOV - Alleged violations of the Benzene Waste NESHAP (40 CFR 61 Subpart FF) and the associated Leak Detection and Repair (LDAR) program for the Organic HAPs from Equipment Leaks MACT (40 CFR 63 Subpart H)</p>	<p>EPA 1st NOV - Issued 03/10/2009 EPA 2nd NOV - Issued 08/21/2009</p> <p>Additional Information:</p> <p>NOV Meetings have been held with EPA, DEQ, and the Responsible Party on 5/27/09, 11/17/09, 03/25/10, 11/10/2010 and 1/26/2011.</p>

	Industrial Inorganic Chemicals NAICS 325199 Chemical Mfg.	2nd NOV - Annual NOx and PM10 emission limit exceedances in 2004, 2005, 2006, and 2007 at the A, C, D, and E trains of the Area 9 hydroxylamine production unit.	
**EPA	Smurfit-Stone Container Corp. / Hopewell Mill Hopewell, Virginia Registration No. 50370 SIC 2631 Pulp Mills NAICS 322130 Pulp, Paper, and Paperboard Products	Discovery dates – 07/27/2010 Alleged violations: Failure to operate in a manner to demonstrate compliance with HAP reduction requirements. Failure to submit periodic startup, shutdown and malfunction reports.	NOV - Issued 09/27/2010 Additional Information: NOV Meeting was held with EPA, DEQ, and the Responsible Party on 01/31/2011.