

MINUTES  
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, DECEMBER 2, 2011  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
2ND FLOOR CONFERENCE ROOM  
629 EAST MAIN STREET  
RICHMOND, VIRGINIA

Convene – 10:00 a.m.

**Board Members Present:**

Hullihen Williams Moore, Chair  
Roger Chaffe  
Jo Anne Scott Webb

Richard Langford  
Manning "Chip" Gasch, Jr  
Tedd Jett

**Board Members Absent:**

Sterling E. Rives III, Vice-Chair

**Department of Environmental Quality:**

David K. Paylor  
Debra Miller

Cindy M. Berndt

**Attorney General's Office:**

Kerri L. Nicholas, Assistant Attorney General

These minutes summarize activities that took place at this Board Meeting. The meeting convened at 10:00 A.M. and adjourned at 11:23 A.M.

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**Minute No. 1 - Review and Approval of Agenda:** The Board approved the agenda with one modification that moved the repeal of the Hg Budget Trading Program for Coal Fired Electric Steam Generating Units from a final exempt process to a fast-track process.

**Minute No. 2 - Minutes:** The Board, on a motion by Mr. Gasch, unanimously approved the minutes from the September 9, 2011, meeting.

**Minute No. 3 - Variance for Atlantic Research Corp Gainesville Facility (Rev. L11):** Ms. Mary E. Major presented a request to publish a proposal to repeal the variance for Atlantic Research Corporation Gainesville Facility. Ms. Major advised the Board that the facility was shut down in March 2007 and the variance was no longer needed.

Based on the Board book material, staff presentation and Board discussions, the Board, on a motion by Mr. Gasch, unanimously authorized the Department to promulgate the proposal for public comment.

**Minute No. 4 - Repeal of Hospital/Medical/Infectious Waste Incinerators (9VAC5 Chapter 40, Article 44, Rev. J11):** Ms. Mary E. Major presented a fast-track proposal for the repeal of Article 44 of 9VAC5-40 concerning hospital/medical/infectious waste incinerators. Ms. Major explained that on October 6, 2009, EPA promulgated revised HMIWI emission guidelines under 40 CFR Part 60,

subpart Ce, that triggered the need for revised state plan submittals. The Department submitted a negative declaration regarding HMIWI sources within the state and requested EPA's approval of a plan withdrawal request and EPA's approval of the request became effective on February 15, 2011. As a result there is no longer a need for the corresponding Virginia regulation. In addition, Ms. Major explained that the definition of the term "metropolitan statistical area" in 9VAC5-10-20 and the listing of such areas in 9VAC5-20-202 were also unnecessary as the term is only used in Article 44 and no other regulation of the board.

Based on the Board book material, staff presentation and Board discussions, the Board, on a motion by Mr. Langford, unanimously authorized the Department to (i) promulgate the proposal for public comment and (ii) set an effective date 15 days after close of the 30-day public comment period provided the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 and the Department does not find it necessary to make any changes.

**Minute No. 5 - Repeal of National Low Emission Vehicle Program (9VAC5 Chapter 200, Rev. M11):** Mr. Gary E. Graham presented a fast-track proposal to repeal 9VAC5-200 concerning the national low emission vehicle program. Mr. Graham explained that the Board's regulation was no longer necessary as the regulations imposed no requirements for vehicle models later than 2006, EPA's mobile source programs became more restrictive than NLEV with the February 10, 2000, promulgation of federal Tier 2 standards beginning with model year 2004 and there was no federal requirement for the Board's regulations.

Based on the Board book material, staff presentation and Board discussions, the Board, on a motion by Mr. Gasch, unanimously authorized the Department to (i) promulgate the proposal for public comment and (ii) set an effective date 15 days after close of the 30-day public comment period provided the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 and the Department does not find it necessary to make any changes.

**Minute No. 6 - Repeal of Mercury (Hg) Budget Trading Program for Coal Fired Electric Steam Generating Units (Part VI of 9VAC5 Chapter 140, Rev. K11) - Request for Board Action on Exempt Final Regulation:** Ms. Mary E. Major presented a fast-track proposal to repeal the mercury budget trading program for coal fired electric steam generating units, Part VI of 9VAC5-140. Ms. Major explained that on February 8, 2008, the District of Columbia Circuit Court of Appeals, in a unanimous decision, vacated CAMR and the associated New Source Performance Standard (NSPS). The vacatur was mandated by the Court on March 14, 2008 and the associated mercury rules are no longer effective. Because the underlying federal rule has been vacated, there is no longer a basis on which the state rule can operate, thus rendering the state rule unnecessary and inconsistent with the federal program.

Based on the Board book material, staff presentation and Board discussions, the Board, on a motion by Ms. Webb, unanimously authorized the Department to (i) promulgate the proposal for public comment and (ii) set an effective date 15 days after close of the 30-day public comment period provided the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 and the Department does not find it necessary to make any changes.

**Minute No. 7 - Federal Documents Incorporated by Reference (Rev. N11):** Ms. Karen G. Sabasteanski presented an exempt final regulatory action to incorporate newly promulgated federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and national emission standards for hazardous air pollutants for source categories (Maximum Achievable Control Technology, or MACT), Rules 5-5, 6-1, and Rule 6-2, respectively, of the board's regulations. Ms. Sabasteanski explained that the regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2011. Below is a list of the new standards the department is recommending be incorporated into the state regulations by reference:

1. One NSPS is being incorporated: Sewage Sludge Incineration Units (Subpart LLLL, 40 CFR 63.4760-4925). The date of the Code of Federal Regulations book being incorporated by reference is also being updated to the latest version.
2. No new NESHAPs are being incorporated. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
3. Two MACTs are being incorporated: Aluminum, Copper, and Other Nonferrous Foundries, Area Sources (Subpart ZZZZZZ, 40 CFR 63.11544-11558); and Gold Mine Ore Processing and Production Area Sources (Subpart EEEEEEE, 40 CFR 63.11640-11653). The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

Based on the Board book material, staff presentation and Board discussions, the Board, on a motion by Mr. Jett, unanimously adopted the proposal with an effective date consistent with the APA and affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the APA.

**Minute No. 8 - High Priority Violators Report:** The Board received a report on high priority violators from Mr. Craig Nichol.

**Minute No. 9 - State Advisory Board on Air Pollution Reports:** The Board received a report on energy efficiency measures as best available control technology for greenhouse gases. In addition, the Board was provided an interim report on the Advisory Board's assessment of factors affecting the development of district energy project and was advised that the comparison of state minor source permitting thresholds and requirements had not been completed.

**Minute No. 10 - Public Forum:** No one appeared during the public forum.

**Minute No. 11 - State Advisory Board on Air Pollution Appointments and Projects:** The Board, on a motion by Mr. Langford, unanimously approved the following appointments to the State Advisory Board on Air Pollution:

For terms expiring on December 31, 2013:

- Daniel Ancona, III - Renewable Energy Consultant
- Brian T. Castelli - Alliance to Save Energy
- James (Jim) Christman, Esquire - Hunton & Williams
- Dan Demers - Virginia International Terminals, Inc.
- L. Evans Drake - Honeywell, Inc.
- Daniel Goldstein, Environmental Resources Management
- Paige Holt - Alliant Techsystems, Radford Army Ammunition Plant
- Ronald Jefferson - Appalachian Power Company
- Kevin McGunnigle, - Covanta Energy
- Anil Mehrotra - Steam Plant Engineer, Hampton/NASA Steam Plant
- Gerald (Jerry) L. Pellett, PhD - NASA Langley Research Center
- Deborah Randolph - interested citizen
- Sheryl Raulston - International Paper
- Andrea Arredondo - Earth Compliance Solutions

In addition, members of the Board were asked to advise Mr. Langford of any ideas for projects for the Advisory Board for 2012.

**Minute No. 12 - Division Director's Report:** Mr. Michael G. Dowd, Air Division Director, advised the Board that the Department had asked EPA to base nonattainment designations under the 2008 75 ppb ozone national ambient air quality standard on the monitoring data for 2009, 2010 and 2011; the Department filed comments on EPA's 1-hour SO<sub>2</sub> national ambient air quality standard implementation guidance; and that EPA release of the proposed new ICI Boiler MACT was expected to occur later that day.

**Minute No. 13 - Future Meetings:** The Board confirmed March 23, June 8, September 14, and November 30 as the dates of their meetings for 2012.

**Minute No. 14 - Election of Officers:** The Board unanimously elected Roger Chaffe as Chair and Richard D. Langford as Vice-Chair effective upon adjournment of the meeting.

  
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Cindy M. Berndt, Director, Office of Regulatory Affairs