

MINUTES  
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, APRIL 24, 2009

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

Convened: 9:35 a.m.; Recessed: 12:45 p.m.; Reconvened: 1:30 p.m.; and Adjourned: 4:35 p.m.

Board Members Present:

Richard D. Langford  
Vivian E. Thomson  
Randolph L. Gordon

Bruce C. Buckheit  
Hullihen W. Moore  
Sterling E. Rives, III

Board Members Absent:

Bernadette W. Reese

Department of Environmental Quality:

David K. Paylor

Cindy M. Berndt

Attorney General's Office:

Carl Josephson, Senior Assistant Attorney General

The meeting was convened at 9:35 a.m., recessed at 12:45 p.m., reconvened at 1:30 p.m. and adjourned at 4:35 p.m.

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**Minute No. 1 - Minutes:** The Board, on a motion by Dr. Gordon, unanimously approved the minutes from the Board's meeting on December 15-16, 2009 with an amendment to Minute No. 12 to add "voted aye" after Buckheit in the fourth paragraph.

**Minute No. 2 - Consumer and Commercial Products (9 VAC 5 Chapter 45, Rev. J07) - Regulation Development Report and Request to Publish Proposal for Public Comment:** Mr. Gary Graham with the Office of Regulatory Affairs presented proposed amendments to the regulations for the control and abatement of air pollution concerning consumer and commercial products. Mr. Graham explained that the regulatory action incorporates all of the changes proposed by revision D06 (Consumer and Commercial Products). In addition, this action (i) expands applicability of five of the seven new articles proposed in revision D06 into the Richmond VOC Emissions Control Area, (ii) amends Chapter 40, Article 48 to expand the applicability of that article into the Richmond VOC Emissions Control Area, and (iii) adds a temporary exemption for one of the product categories in the new article that controls VOC emissions from adhesives, adhesive primers, sealants and sealant primers. This action also modifies many of the compliance dates proposed in revision D06. All of the proposed revision D06 text is included in this regulatory action to preserve those changes in the event that revision D06 is withdrawn.

Mr. Graham reviewed the public participation to date on the proposal and explained that the proposed regulatory action adds a new chapter (9 VAC 5-45) specifically for regulations pertaining to consumer and commercial products. The new chapter is applicable to specific product types and the owners that are involved in the manufacture, distribution, retail sales and in some cases, the marketing and use of those products.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Thomson, directed that the proposal be amended to extend applicability of Article 6 (Adhesives and Sealants), to the Richmond VOC Emissions Control Area and authorized public comment on the amended proposal.

**Minute No. 3 - Permit Actions Before the Board - Request for Board Action on Exempt Final Regulation (Rev. B09):** Ms. Karen G. Sabasteanski with the Office of Regulatory Affairs presented amendments to the public participation requirements for permit applications subject to the minor new source review program. Ms. Sabasteanski explained that the requirements found in Article 6 of 9VAC5 Chapter 80 (Permits for Stationary Sources) under 9VAC5-80-1170 E require that permit applications for all sources subject to the minor NSR program meet the public participation requirement of Code § 10.1-1307.01 (Localities particularly affected) that extends public comment for 15 days beyond the date of the public hearing. The public participation requirements of § 10.1-1307.01 are limited to permit applications for major stationary sources and major modifications. The current text of subsection E is contrary to Code § 10.1-1322.01 L (Permits; procedures for public hearings and permits before the board), which states that "[t]he public comment period will remain open for 15 days after the close of the public hearing if required by § 10.1-1307.01." Since permit applications for certain sources subject to the minor NSR program are not subject § 10.1-1307.01, this language is in error, and must be corrected.

Based on the Board book material, staff presentation, and Board discussion, the Board, on a motion by Ms. Thomson, unanimously adopted the amendments with an effective date consistent with the Administrative Process Act (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. 4 - Ambient Air Quality Standards (9VAC5-30, Rev. A09) - Request for Board Action on Exempt Final Regulation:** Ms. Karen G. Sabasteanski of the Office of Regulatory Affairs presented amendments to the regulations for the control and abatement of air pollution concerning the national ambient air quality standard (NAAQS) for lead. Ms. Sabasteanski explained that on November 12, 2008 (73 FR 66964), EPA issued a regulation revising the lead NAAQS by adding a primary and secondary standard of 0.15 micrograms per cubic meter. The standards are met when the maximum arithmetic 3-month mean concentration for a 3-year period is less than or equal to 0.15 micrograms per cubic meter. The new standards became effective on January 12, 2009.

Ms. Sabasteanski briefed the Board on the following substantive amendments:

1. Appendix Q and Appendix R to 40 CFR Part 50 have been added to the federal documents incorporated by reference list. [9VAC5-20-21 E 1 a (1) (q) and (r)]
2. Specifics relative to the lead standard have been added to the section on reference conditions. [9VAC5-30-15]
3. The new 0.15 micrograms per cubic meter lead standard has been added. [9VAC5-30-80 B and C]

The Board, based on the Board book material, staff presentation and Board discussion, on a motion by Ms. Thomson unanimously adopted the amendments 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 § 2.2-4406 B of the Administrative Process Act..

**Minute No. 5 - Northern Virginia Opacity Revision Comments and Recommendation:** Ms. Doris McLeod of the Air Division briefly updated the Board on new material available since the December 2008 meeting relative to the request from the Metropolitan Air Quality Committee that Virginia revise the opacity requirements from 20% to 10%.

A motion by Dr. Gordon to accept staff recommendations to deny the request to initiate a rulemaking failed 3 to 3 (Dr. Gordon and Messrs. Langford and Rives voted aye and Ms. Thomson and Messrs. Buckheit and Moore voted nay).

**Minute No. 6 - High Priority Violators (HPVs) For The First Quarter, 2009:** The Board received a report from Mr. Craig Nicol with the Division of Enforcement on high priority violators for the first quarter 2009.

**Minute No. 7 - Report on Particulate Matter (PM<sub>10</sub>) in Roda, VA:** Mr. Glen Besa, Director, Virginia Chapter of the Sierra Club, introduced Dr. Viney Aneja from North Carolina State University. Mr. Besa explained that Dr. Aneja had conducted air quality monitoring in Roda for the Sierra Club. Following the introduction, Dr. Aneja presented the results of the air quality monitoring study. Mr. Besa then presented specific recommendations for the Board to consider. Mr. Carl "Pete" Ramey, Mr. Adam Wells and Ms. Kathy R. Selvage appeared to comment on the study and requests for assistance from the Board.

Mr. Charles Turner briefly commented on the study results and Ms. Crystal Bazyk briefed the Board on recent actions undertaken by the local coal companies to address citizen concerns.

Based on the study report, presentations and Board discussion, Mr. Buckheit moved that the Board direct staff to (1) gather monitoring data in the Roda area and develop a plan for a regional response for other communities where there is a need, (2) take the lead to get the necessary state agencies and coal companies together to take measures to address the study results and the citizens' concerns; (3) ask the Centers for Disease Control to advise on any health advisory. Dr. Gordon moved that the motion be amended to direct the Department to request that the Virginia Department of Health Commissioner review and study whether there are any associated health issues instead of the Centers for Disease Control. The amendment motion failed 2 to 4 (Dr. Gordon and Mr. Langford voted aye and Ms. Thomson and Messrs. Buckheit, Moore and Rives voted nay). The Board then unanimously adopted then original motion and asked staff to provide reports to the Board at future meetings.

**Minute No. 8 - Public Forum:** Mr. Jim Gould with the Sierra Club appeared to discuss concerns over air quality in Hopewell. Mr. Gould advised the Board that a citizens group, Hopewell Clean Air Network, had been formed in Hopewell and that the group was collecting air samples in the area. He informed the Board that the group would be sending a petition to the Board asking for action to address objectionable odors in the City.

**Minute No. 9 - Legislative Update:** The Board received a report from Ms. Angela Jenkins, Air and Waste Policy Manager, on the 2009 General Assembly actions.

**Minute No. 10 - Hopewell Monitoring Study:** The Board received a report from Mr. Charles Turner of the Office of Air Quality Monitoring on the Hopewell Monitoring study performed by the Department.

**Minute No. 11 - 2008 Ozone Standard Designation Recommendations:** The Board received a report from Mr. Thomas Ballou, Office of Air Quality Planning, on the 2008 Ozone Standard Designation Recommendations.

**Minute No. 12 - Regional Haze State Implementation Plan (SIP):** The Board received a report from Ms. Doris McLeod of the Office of Air Quality Planning on the Regional Haze SIP.

**Minute No. 13 - Strategic Planning:** Mr. Michael Dowd, Director of the Air Division, presented a report on strategic planning. Mr. Dowd reviewed authorities and mandates and new initiatives. He then reviewed and the Board discussed the following goals:

- Attain national ambient air quality standards in a proactive and timely manner
- Develop air toxics risk assessment criteria and exposure regulations based on monitoring data and latest science
- Increase permit efficiency through greater use of general and boilerplate permits for small source categories while assuring protection of air quality
- Maximize diesel emission reductions through funding from the ARRA of 2009 and DERA
- Maintain high level of compliance activities to assure Virginians are not exposed to unhealthy concentrations of criteria pollutants
- Continually improve our monitoring program to assure that decisions affecting air quality are based on the best available data

**Minute No. 14 - Future Meetings:** A date for future meetings was not set.

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Cindy M. Berndt, Director, Office of Regulatory Affairs