

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING

THURSDAY, SEPTEMBER 3, 2009

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

Board Members Present:

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

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

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 9:40 a.m., recessed at 12:28 p.m., reconvened at 1:35 p.m., closed meeting convened at 4:05 p.m., open meeting reconvened at 4:45 p.m. and adjourned at 5:40 p.m.

Minute No. 1 - Minutes: The Board, on a motion by Ms. Thomson, unanimously approved the minutes from the April 24, 2009, meeting with an amendment to Minute No. 5 to show that Ms. Thomson, Mr. Buckheit and Mr. Moore voted nay.

Minute No. 2 - Future Meetings/Agenda Development: The Board set November 20, 2009, March 26, 2010, and June 4, 2010 as the dates of future meetings. In addition, the Board, after some discussion of how the agenda is developed, decided that individual Board members should send any suggestions on standing rules for operations of the Board to Ms. Thomson and Mr. Rives. The suggestions would be used to develop draft rules for the full Board's consideration.

Minute No. 3 - Permit Actions Before the Board (Part I of 9VAC5 Chapter 80, Rev. F09) - 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 permit actions before the Board. Ms. Sabasteanski advised the Board that Chapter 627 of the 2009 Acts of Assembly revised the provisions of the State Air Pollution Control Law relative to a meeting of the Board held to review a decision on Board consideration and determine whether or not to grant board consideration, or to delegate the permit to the director. Ms. Sabasteanski reviewed the amendments for the Board and advised that the Board's action was exempt from the standard regulatory process as the amendments were necessary to conform to Virginia statutory law.

Based on the Board book material, presentations and Board discussion, on a motion by Ms. Thomson, the Board unanimously adopted the amendments with an effective date consistent with the Administrative Process Act and affirmed that the Board 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 Administrative Process Act.

Minute No. 4 - Definition of Volatile Organic Compound (9VAC5 Chapter 10, Rev. G09): Ms. Karen G. Sabasteanski of the Office of Regulatory Affairs presented amendments to the definition of Volatile Organic Compound. Ms. Sabasteanski advised the Board that on January 21, 2009 (74 FR 3437), EPA revised the definition of VOC in 40 CFR 51.100 to exclude two substances that have been demonstrated to be less reactive and are therefore not considered to be VOCs: propylene carbonate and dimethyl carbonate. This exclusion is accomplished by adding the substance to a list of substances not considered to be a VOC and is proposed to be accomplished using the fast-track rulemaking process.

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

Minutes No. 5 - High Priority Violators' Report: Mr. Craig Nicol of the Division of Enforcement presented a report on high priority violators for the 2nd and 3rd quarters of federal FY 2009.

Minute No. 6 - Royal Fumigation: - Mr. Buckheit advised the Board that he had received a complaint from Value Recovery regarding a Royal Fumigation facility located in Suffolk and provided a brief description of the complaint. He requested that the complaint be provided to all the Board members and appropriate staff. After discussion, members of the Board asked staff to provide a report to the Board at a later meeting on what, if any, enforcement or permitting action is necessary for Royal Fumigation as well as measures that could be undertaken to ensure that sources which should be permitted are permitted.

Minute No. 7 - Public Forum: Several persons appeared during the public forum. Ms. Helen Eggleston, Michael Eggleston, Betsy Shepard, Lisa Craig, Julie Verdaguer and Cale Jaffe appeared to present air quality concerns with a proposal from Old Dominion Electric Cooperative for a coal-fired power plant to be located in Surry County. Mr. Jim Gould representing the Hopewell Clean Air Network appeared to discuss concerns with the air quality in Hopewell. He requested that the Board direct an official investigation to determine the frequency of odors continually released by large manufacturing facilities located in Hopewell including holding public hearings to hear complaints from citizens and utilizing odor panel surveys. He also requested that the Board consider other steps necessary to evaluate the cumulative and synergistic effects of air pollution on the health of Hopewell citizens. Mr. Mark Hillyer appeared regarding concerns with the air quality in Hopewell. Mr. Glen Besa, Director of the Virginia Chapter of the Sierra Club, appeared regarding the Old Dominion Electric Cooperative's proposed facility and expressed appreciation for the closer scrutiny on the facilities utilizing coal.

Minute No. 8 - Particulate Matter in Roda: Mr. Charles L. Turner, Director of the Air Monitoring Office, presented a report to the Board on the results of the Department's PM10 monitoring in Roda and Ms. Crystal Bayzk, Air Compliance Manager in the Southwest Regional Office, presented a report on the efforts by the Department to coordinate voluntary measures to address dust issues in Roda.

The Board then received a report from Mr. Tom Johnson, a consultant for Cumberland Resources, Inc. on the requests of a monitoring study performed on behalf on the Company. In addition, the Board heard from several interested citizens: Glen Besa with the Sierra Club, Pete Ramsey, Kathy Selvage, Larry Bush, Laura Miller, Adam Wells and James Shelton.

Based on the Board book material, presentations at the meeting and Board questions and discussion, the Board, on a motion by Mr. Buckheit, unanimously directed the staff to continue to work with the appropriate parties (the Company, the community, the Department of Mines, Minerals and Energy, and others) to

develop a dust control plan that clarifies what reasonable dust control measures are, that provides a mechanism for modification based on changing conditions and is enforceable by a state agency and to report back to the Board at the November meeting.

Minute No. 9 - Closed Meeting: On a motion by Mr. Langford, the Board unanimously voted to go into a closed meeting pursuant to section 2.2-3711(a)(7) of the Code of Virginia for consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by counsel, concerning the status of, and agency action pertaining to, active litigation in *Mirant Potomac River, LLC v. SAPCB* (Court of Appeals Record No. 2067-08-2) and *Appalachian Voices, et al. v. SAPCB* (Case No. CL08-3530).

Upon completion of the closed meeting on a motion by Mr. Langford, the Board on a roll call vote unanimously voted to end its closed meeting and certified that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board. [Note: Dr. Gordon recused himself from the voting and closed session discussions.]

Minute No. 10 - Virginia City Hybrid Energy Center: The Board, on a motion by Ms. Thomson, unanimously approved the following regarding *Appalachian Voices, et al v. the State Air Pollution Control Board*: The Board has reviewed the order of the Circuit Court, dated September 2, 2009, and the action of the Director, dated September 2, 2009, removing condition 33 from the MACT permit and reissuing the MACT permit, and considering both actions, this Board finds that the Director acted within his authority and hereby adopts and ratifies NUNC PRO TUNC the action of the Director effectuating the Court's order. [Note: Dr. Gordon recused himself from the discussion and the vote pursuant to § 2.2-3114.E of the Code of Virginia.]

Minute No. 11 - Inhalation Toxicology Group: Ms. Patricia McMurray of the Office of Remediation Programs in the Waste Division briefed the Board on the activities of the Inhalation Toxicology Group that had been established to advise the Department on the appropriate methodology for selecting or developing toxicity factors (inhalation unit risks and reference concentrations) for use in developing Significant Ambient Air Concentrations (SAAC).

Minute No. 12 - Air Division Director's Report: Mr. Michael G. Dowd, Director of the Air Division, briefed the Board on a guidance document addressing implementation of the CAIR nonattainment regulations, the PM2.5 Modeling Workgroup and PM2.5 Permitting, the status of the permit application from Old Dominion Electric Cooperative for a coal-fired power plant to be located in Surry County, the current activities of the PM2.5 Modeling Workgroup, the air quality program budget and activities addressing § 110(a)(2)(d) of the Clean Air Act. Mr. Rob Feagins, Air Permit Manager in the Southwest Regional Office, provided a briefing on status of the Virginia City Hybrid Energy Center in Wise County.

Cindy M. Berndt, Director, Office of Regulatory Affairs