

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
TUESDAY, JUNE 29, 2004

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

The meeting was convened at 9:35 a.m., recessed at 11:05 a.m., reconvened at 11:20 a.m., recessed at 1:00 p.m. and reconvened at 1:45 p.m. On a motion made by Ms. Thomson, the Board voted to go into closed session at 1:48 p.m. and on a motion made by Ms. Thomson, the Board unanimously voted to reconvene in open session at 2:17 p.m. The meeting was recessed at 3:25 p.m., reconvened at 3:34 p.m. and adjourned at 5:00 p.m.

Minute No. 1 - Minutes: The Board on a motion by Ms. Bucher approved, with an amendment to Minute 9 (change “meetings” to “minutes”), the minutes of the March 29, 2004.

Minute No. 2 - Report on Air Quality Program Activities: Mr. John M. Daniel, Jr. gave a report on air program activities.

Minute No. 3 - Report on High Priority Violators (HPVS) for the First Quarter, 2004: Mr. Michael A. Dowd, Division of Enforcement Coordination, presented a report on high priority violators for the first quarter of 2004.

Minute No. 4 – State Advisory Board on Air Pollution Appointments: The Board on a motion by Ms. Thomson unanimously approved the appointment of Dr. D. F. Rochester to the State Advisory Board on Air Pollution for a two-year term ending on December 31, 2005.

Minute No. 5 - 2004 Legislative Summary: Ms. Kathy R. Frahm, Director, Division of Policy, presented a report on the 2004 General Assembly Session.

Minute No. 6 - Ambient Air Quality Standards (9 VAC 5 Chapter 30, Revision A04): Ms. Karen G. Sabasteanski, Office of Air Regulatory Development, presented amendments to the ambient air quality standards to the Board. Ms. Sabasteanski informed the Board that EPA had issued (i) a regulation replacing the 1-hour 0.12 parts per million (ppm) ozone national ambient air quality standard (NAAQS) with an 8-hour standard at a level of 0.08 ppm; (ii) a regulation revising the particulate matter standard by adding a new standard for fine particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM_{2.5}), set at 15 micrograms per cubic meter (:g/m³); and (iii) a final rule to implement Phase I of the 8-hour ozone standard, including the transition from the 1-hour to the 8-hour standard. Ms. Sabasteanski explained that as a result of these federal actions amendments to Chapter 30 of the Regulations for the Control and Abatement of Air Pollution were necessary to make Chapter 30 consistent with 40 CFR Part 50.

Based on the Board book material, staff presentation and Board discussion, the Board on a motion made by Mr. Langford unanimously (i) adopted the amendments to Chapter 30 with an effective date consistent with the requirements of the Administrative Process Act; (ii) affirmed that the Board will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision; and (iii) directed that the amendments be submitted to the EPA as a State Implementation Plan revision.

Minute No. 7 - Nonattainment Areas (9 VAC 5 Chapter 20, Revision B04): Ms. Karen G.

Sabasteanski, Office of Air Regulatory Development, presented amendments to the nonattainment areas provisions of Chapter 20. Ms. Sabasteanski informed the Board that EPA amended 40 CFR Part 81 by adding a list of areas that are nonattainment for the 8-hour ozone standard and promulgated a final rule to implement Phase I of the 8-hour ozone standard, including the transition from the 1-hour to the 8-hour standard. Ms. Sabasteanski explained that as a result of these federal actions amendments to Chapter 20 of the Regulations for the Control and Abatement of Air Pollution were necessary to make Chapter 20 consistent with federal regulations.

Based on the Board book material, staff presentation and Board discussion, the Board on a motion made by Ms. Bucher voted 3 to 1 (Ms. Thomson voted no) to (i) adopt the amendments to Chapter 20 with amendments distributed at the meeting; (ii) affirm that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision and (iii) direct that the amendments be submitted to EPA as a State Implementation Plan revision.

Minute No. 8 - Federal Documents Incorporated by Reference (9 VAC 5 Chapter 60, Revision H04):

Ms. Karen G. Sabasteanski, Office of Air Regulatory Development, presented amendments that incorporate a newly promulgated provision to the national emission standards for hazardous air pollutants for source categories (Maximum Achievable Control Technology, or MACT), Rule 6-2 of Chapter 60 of the Regulations for the Control and Abatement of Air Pollution. Ms. Sabasteanski explained that the amendments would add a new section to Rule 6-2 containing requirements for the Performance Track Program.

Based on the Board book material, staff presentation and Board discussion, the Board on a motion made by Ms. Thomson unanimously (i) adopted the amendments to Chapter 60, (ii) affirmed that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, (iii) and directed that the amendments be submitted to EPA in order to retain delegation of authority to enforce the EPA regulations.

Minute No. 9 - Permit Application Fees (9 VAC 5 Chapter 80, Revision C04): Mr. Gary Graham, Office of Air Regulatory Development, presented amendments to Chapter 80 of the Regulations for the Control and Abatement of Air Pollution to implement Chapters 249 and 324 of the 2004 Acts of Assembly. Mr. Graham explained that those chapters authorize the Board to adopt regulations to collect permit application fee amounts not to exceed \$30,000 from applicants for a permit for a new major stationary source and that the permit application fee amount paid shall be credited towards the amount of annual fees owed pursuant to this section during the first two years of the source's operation. Mr. Graham briefed the Board on the new permit fee provisions. Mr. Graham explained that as a result of the 2004 Acts of Assembly the addition of a new Article 10 to Chapter 80 was necessary to implement the new permit application fee requirements.

Based on the Board book material, staff presentation and Board discussion, the Board on a motion made by Ms. Thomson unanimously adopted the proposal to be effective upon filing with the Registrar of Regulations.

Minute No. 10 – Public Forum: Ms. Janet Zeller of the Blue Ridge Environmental Defense League appeared before the Board concerning W & L Construction. Ms. Zeller informed the Board that there had been no response to a previous request to initiate a rulemaking to address portable facilities such as W & L Construction. She explained that there is no public participation process for the relocation of the portable facilities and that there should be one.

The Board and Mr. Burnley apologized for the lack of response. Mr. Burnley advised Ms. Zeller to contact his office and he would ensure a response would be forthcoming.

Minute 11 - New Source Review Permit for the CPV Warren, LLC electric generating facility located in Warren County: Prior to the staff presentation, a motion made by Mr. Langford to go into closed session for consultation with legal counsel failed on a 2 to 2 vote, with one abstention. Ms. Sharon Foley, Air Permit Manager in the Valley Regional Office, then presented a report on the new source review permit for CPV Warren, LLC. Ms. Foley presented an in-depth report on the proposed construction and operation of a nominal 580-megawatt combined-cycle electric power generating facility to be located in Warren County. She detailed the permit application process and draft permit development process conducted by the Department. She reviewed the draft permit public participation process, the public comments received and the staff's responses to the comments including proposed modifications to the draft permit in response to those comments.

After Board discussion and questions, the Board on a motion made by Ms. Thomson unanimously voted to go into closed session for consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by counsel, concerning CPV Warren Permit –legal issues. The Board on a motion made by Ms. Thomson ended its closed session and certified that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed session and (iii) only such public business matters identified in the motion convening the closed session were heard, discussed or considered by the Board.

The Board then heard comments from Mr. James Barrett and Mr. Jeff Rezin from CPV Warren LLC, Jeff Gleason from Southern Environmental Law Center, Dan Holmes from Piedmont Environmental Council, Joy M. Oakes, National Parks Conservation Association, Pamela Irwin from the Sierra Club, Louis Zeller from the Blue Ridge Environmental Defense League and Tony Carter, Mark Bower and Doug Stanley from Warren County.

After more discussion and questions, Ms. Thomson moved that the Board deny the permit application from CPV Warren LLC for the proposed facility in Warren County. The motion failed 2 to 3 (Ms. Thomson and Ms. Siddhanti voted aye, Messrs. Baise and Langford and Ms. Bucher voted no).

Ms. Thomson, noting that the permittee had agreed to providing NOx offsets, then moved that issuance of the permit be left to the Department with a direction to amend the permit to include a federally enforceable provision in the permit for NOx offsets, equivalent to 1.15 times its actual emissions, as recommended by the Federal Land Manager. The motion passed on a vote of 4 to 1 (Ms. Bucher voted no).

Cindy M. Berndt, Director
Regulatory Affairs