

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
THURSDAY, DECEMBER 8, 2005

DEPARTMENT OF ENVIRONMENTAL QUALITY
4949-A COX ROAD
GLEN ALLEN, VA

Board Members Present:

Richard D. Langford, Chairman
Smita Siddhanti

Vivian E. Thomson, Vice-Chairman
Hullihen W. Moore

Board Members Absent:

John N. Hanson

Department of Environmental Quality:

Robert G. Burnley, Director
Cindy M. Berndt

Attorney General's Office:

Carl Josephson, Senior Assistant Attorney General

- 1) The following minutes summarize activities, which took place at this Board meeting.
- 2) The meeting was convened at 9:12 a.m., recessed at 10:40, reconvened at 10:50, recessed at 12:00 p.m., reconvened at 1:37 p.m., recess at 3:35 p.m., reconvened at 3:55 p.m. and adjourned at 4:20 p.m. [Note: the meeting was originally scheduled for two days; however, the second day was cancelled due to weather.]

Minute No. 1 - Major New Source Review Reform (Rev. E03): Mr. Robert A. Mann, Director, Office of Air Regulatory Development, presented final regulation amendments that meet federal statutory and regulatory requirements concerning major new source review reform. Mr. Mann advised the Board that on December 31, 2002, EPA promulgated its final rule revising the federal New Source Review (NSR) permitting program for PSD (attainment) and nonattainment areas. Further, he advised that the state must adopt amendments to Articles 8 and 9 of 9 VAC 5 Chapter 80 and submit revisions to the SIP to reflect the rule revisions no later than January 2, 2006.

Mr. Mann then provided the Board with a summary of the substantive amendments originally proposed for public comment and detailed the revisions being recommended for final adoption. Mr. Mann also reviewed several changes to the final regulatory text from that included in the Board book.

Mr. Joe Croce and Mr. Tom Knauer, representing VMA, then appeared to address their members' concerns with the final rule. In addition, Mr. Caleb Jaffe of the Southern Environmental Law Center spoke reiterating his organizations' position on the regulatory amendments.

After discussion and questions, Ms. Thomson moved to adopt the staff recommendation that the Board adopt the final regulation with the changes presented during the meeting and that the final regulation be submitted to the U.S. Environmental Protection Agency as a state implementation revision. Ms. Thomson did not include in the motion the portion of the staff recommendation that would have set the

effective date of the amendments as 30 days after the date on which a notice is published in the Virginia Register acknowledging that the administrator had approved the amendments adopted by the Board. Mr. Moore seconded.

Mr. Moore then moved that the regulation be amended as follows:

1. that subparagraph b in the definition of “baseline actual emissions” in 9 VAC 5-80-1615 C and 9 VAC 5-80-2010 C, on pages 27 and 114 respectively, be modified by adding the following: The board may allow the use of a different time period upon a determination that it is more representative of normal source operation.
2. that subparagraph c in the definition of “projected actual emissions” in 9 VAC 5-80-1615 C and 9 VAC 5-80-2010 C, on pages 47 and 131 respectively, be deleted.

Ms. Thomson seconded.

Mr. Mann then informed the Board that to address the effective date recommendation, subsection 3 on page 21 and 22 and subsection F on page 109 would need to be deleted.

The Board after receiving additional comment from Messrs. Knauer and Jaffe voted 3 to 1 to approve Mr. Moore’s amendments (Mr. Langford voted no).

Ms. Thomson moved to further amend the regulation by removing subsection E on Page 21 and 22 and subsection F on page 109 in 9 VAC 5- 80-1605 and 9 VAC 5-80-2000 respectively and Mr. Moore seconded. The Board voted unanimously to approve the amendments.

The Board then voted unanimously, based on the Board book material, the staff presentation and Board discussions, to adopt the amended final regulation and submit the final amendments to the U.S. Environmental Protection Agency as a state implementation plan revision. Included in the motions was an authorization to renumber the text of the amendments as required by the amendments approved by the Board. (Note: Mr. Langford declared that he was a retiree of Celanese, which may be affected by the regulation and he was able to participate in the transaction fairly, objectively, and in the public interest.)

Minute No. 2 – Public Forum: There were three speakers during the public forum. Mr. Michael Town from the Sierra Club appeared to discuss the Mirant power plant in Alexandria. He asked that the Board take whatever actions are necessary to require that the plant be shut down. Ms. Mary Harris also appeared to discuss Mirant. She advised the Board that the community living around the plant had noticed significant differences in the quality of their life since the plant had not been operating and thanked the Board for their efforts. Finally, Ms. Julie Crenshaw appeared to ask the Board to consider developing a definition of “hot spot” that could be incorporated into the regulations and used to address situations like Mirant and mercury.

Minute No. 3 – Minutes: The Board, on a motion by Ms. Thomson, unanimously approved the minutes of the Board’s meeting on September 26, 2005.

Minute No. 4 – Clean Air Interstate Rule (9 VAC 5 Chapter 140, Rev. E05): Ms. Elizabeth Major of the Office of Air Regulatory Development presented proposed amendments to the Board’s regulation concerning the Clean Air Interstate Rule (CAIR). Ms. Major explained that on May 12, 2005 (70 FR 25162), EPA published a final rule designed to reduce the interstate transport of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) across the eastern portion of the United States and help states

and localities attain the 8-hour ozone and fine particles (PM_{2.5}) standards. Ms. Major explained that the proposal encompasses the establishment of three new parts to 9 VAC 5-140, the NO_x annual trading program, the NO_x seasonal trading program and the SO₂ annual trading program and briefed the Board on the details of each. In addition, Ms. Major discussed changes to the text from the language in the Board book.

Based on the Board book material, staff presentation and Board discussions, the Board, on a motion by Ms. Thomson, unanimously approved the proposal with changes presented at the meeting for public comment. In addition, the Board asked that the Department specifically seek comment on the allocation for renewable energy and different allocation methods. (Note: Mr. Langford declared that he was a retiree of Celanese, which may be affected by the regulation and he was able to participate in the transaction fairly, objectively, and in the public interest.)

Minute No. 5 – Clean Air Mercury Rule (9 VAC 5 Chapters 60 AND 140, Rev. F05): Ms. Elizabeth Major of the Office of Air Regulatory Development presented the proposed amendments to the Board’s regulations concerning the Clean Air Mercury Rule (CAMR), a rule that will significantly reduce mercury emissions from coal-fired power plants across the country. Ms. Major explained that the regulatory action encompasses the addition of one new part to 9 VAC 5-140 and one new article to 9 VAC 5-60, addressing electric generating units and non electrical generating units and provided the details of the amendments for each.

In addition to the presentation of the Department’s proposal, the Department also discussed the newly announced model rule endorsed by STAPPA/ALAPCO (State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials).

Based on the Board book material, staff presentation and Board discussions, the Board deferred action on the proposal presented by the staff. The Board, based on a motion by Mr. Moore, asked that the Department develop another proposal based on the STAPPA/ALAPCO model rule, including a comparative analysis of the different approaches and come back to the Board at a special meeting in the near future (Vote was 3 to 1 with Mr. Langford voting no). (Note: Mr. Langford declared that he was a retiree of Celanese, which may be affected by the regulation and he was able to participate in the transaction fairly, objectively, and in the public interest.)

Minute No. 6 - High Priority Violators (HPVs) for the Third Quarter, 2005: Mr. Michael Dowd, Division of Enforcement Coordination presented a report on high priority violators for the third quarter of 2005 and updated the Board on the status of the Mirant case.

Cindy M. Berndt