

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
WEDNESDAY, JUNE 21, 2006

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

Board Members Present:

Richard D. Langford, Chair
John N. Hanson
Hullihen Williams Moore

Vivian E. Thomson, Vice-Chair
Smita Siddhanti

Department of Environmental Quality:

David K. Paylor, Director

Cindy M. Berndt

Attorney General's Office:

Carl Josephson
Senior Assistant Attorney General

The meeting was convened at 10:05 a.m., recessed at 12:41 p.m., reconvened at 1:32 p.m. and was adjourned at 4:32 p.m.

Minute No. 1 - 8-hour Ozone Maintenance Areas (9 VAC 5 Chapter 20, Rev. B06): Ms. Karen Sabasteanski presented amendments to the regulations for the control and abatement of air pollution concerning 8-hour ozone maintenance areas. Ms. Sabasteanski explained that the U. S. Environmental Protection Agency (EPA) had approved a list of areas that had been nonattainment for the 8-hour ozone standard as attainment and the state implementation plan (SIP) must be revised in order to meet the federal requirements for 8-hour ozone attainment areas. Ms. Sabasteanski briefed the Board on the substantive changes to the regulations, including:

1. The addition of the Fredericksburg Ozone Maintenance Area (Spotsylvania County, Stafford County, and Fredericksburg City) and the Shenandoah National Park Ozone Maintenance Area (the portions of Madison County and Page County located in Shenandoah National Park). [9 VAC 5-20-203 1]
2. The deletion of the Fredericksburg Ozone Nonattainment Area (Spotsylvania County, Stafford County, and Fredericksburg City) and the Shenandoah National Park Ozone Nonattainment Area (the portions of Madison County and Page County located in Shenandoah National Park). [9 VAC 5-20-204 A 2]

The Board, based on the Board book material, staff presentation and Board discussion, on a motion by Mr. Hanson, adopted the proposal, with an effective date of September 1, 2006; affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision; and directed the amendments be submitted to EPA as a State Implementation Plan Revision.

Minute No. 2 - VOC and NO_x Emissions Control Areas (9 VAC 5 Chapters 20 and 40, Rev. D04): Mr. Gary Graham presented amendments to the VOC and NO_x emissions control areas necessitated by the recent promulgation of the new 8-hour ozone nonattainment areas. He explained that the amendments created a new Fredericksburg VOC and NO_x Emissions Control Area and

expanded the Richmond and Hampton Roads VOC and NO_x Emissions Control Areas to include all of the counties and cities in the corresponding 8-hour ozone nonattainment areas. Mr. Graham advised the Board that most of the emission standards in 9 VAC 5 Chapter 40 that are designed to attain and maintain ozone air quality standard would be extended to the new areas automatically by reference but that regulations that refer to individual VOC emissions control areas must be amended. He then briefed the Board on the substantive amendments that were originally proposed for public comment; provided a summary of the public comment received and reviewed the substantive changes the Department was recommending be made to the original proposal.

The Board, based on the Board book material, staff presentation and Board discussion, on a motion by Ms. Thomson, unanimously adopted the proposal, with an effective date as provided in the Administrative Process Act and authorized submittal to EPA as a State Implementation Plan Revision.

Minute No. 3 - Open Burning (9 VAC 5 Chapter 40, Rev. H03): Ms. Mary E. Major presented final amendments to the regulations for the control and abatement of air pollution concerning open burning.

Ms. Major informed the Board that the regulation was developed to provide a mechanism to remedy both a public welfare problem and a public health problem. The regulation has proven essential in managing frequent open burning, including burning with the use of special incineration devices, conducted throughout the Commonwealth, particularly in rural and suburban areas. Ms. Major explained that the open burning regulation (1) limits or in some instances prohibits open burning, (2) establishes requirements to restrict emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs) during the peak ozone season in VOC control areas to the level necessary for the protection of public health and welfare, and (3) provides guidance to local governments on the adoption of ordinances to regulate open burning.

Ms. Major then detailed the following substantive amendments that were originally proposed for public comment.

1. Prohibit the use of special incineration devices during the summer burning ban. (A special incineration device is a pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.)
2. Expand the summer burning ban from three months to five.
3. Expand the summer ban into the new volatile organic compound emissions control areas.
4. Resolved definition conflicts between the regulations of the Waste Management Board and this regulation.
5. Integrated air curtain destructor requirements with incinerator rules of the Board.

The following substantive changes the Department was recommending be made to the original proposal were also presented:

1. Language which was previously struck through has been restored for clarity so that the reader understands that the ban on burning applies only to clean burning waste and debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations. [Subdivision 8 of 9 VAC 5-40-5630]
2. Technical corrections have been made to the definitions in both the state regulation and the model rule for "Clean wood", "Demolition waste", and "Junkyard".
3. The term "destruction" has been substituted for the term "disposal" to minimize conflict with Department of Waste terminology and, where appropriate, the phrase "on site" has been added for clarity.

The Board, based on the Board book material, staff presentation and Board discussion, on a motion by Mr. Moore, unanimously adopted the proposal, with an effective date as provided in the Administrative Process Act, and authorized submittal to EPA as a State Implementation Plan Revision.

Minute No. 4 - Major New Source Review Reform (9 VAC 5 Chapter 80, Rev. E03): Mr. Robert A. Mann, Office of Air Regulatory Program Development, presented amendments to the regulations for the control and abatement of air pollution concerning major new source review reform. Mr. Mann explained that on December 8, 2005, the board adopted final amendments to its regulations concerning major new source review reform. The final regulation amendments as adopted were published in the Virginia Register on January 23, 2006 and were to become effective on February 22, 2006. However, pursuant to § 2.2-4007 K of the Code of Virginia, at least 25 persons requested an opportunity to submit oral and written comments on the changes to the proposed regulation. Because of the substantive nature of these additional changes and the requests from petitioners, the effective date was suspended and the proposal was reopened for public comment on those changes to the final regulation.

Mr. Mann detailed for the Board the December 8, 2005, provisions of the major new source review reform program and reviewed for the Board the public comments received during the suspension public comment period and staff response to those comments.

Mr. Mann then presented for the Board's consideration two changes to the regulation based on the comment received: (1) provisions for a hybrid test for projects that involve multiple types of emissions units be restored (9 VAC 5-80-1605 G 6; 9 VAC 5-80-2000 G 6) and (2) provisions that exclude emission increases that could be accommodated and are unrelated to the project, including demand growth, from projected actual emissions be restored (9 VAC 5-80-1615 C (definition of "projected actual emissions," subdivisions b, c and d), 9 VAC 5-80-1785 B 1 c, 9 VAC 5-80-2010 C (definition of "projected actual emissions," subdivisions b, c and d), 9 VAC 5-80-2091 B 1 c).

Prior to Board consideration of staff recommendations, the Board received public comment from Caleb Jaffe, Southern Environmental Law Center; Thomas Knauer representing the Virginia Manufacturer's Association; and Kathy Taylor from Dominion Resources.

After discussions, Mr. Moore offered substitute language concerning demand growth. The language was reviewed by Department staff and interested persons and additional comment on the substitute language was accepted by the Board.

The Board, on a motion by Mr. Moore, voted four to one to amend the final regulation presented by the staff to include the substitute language on demand growth. Mr. Hanson voted no. The Board then, based on the Board book material, staff presentation and Board discussion, on a motion made by Mr. Moore, unanimously adopted the revised amendments to the regulations for the control and abatement of air pollution concerning major new source review reform with an effective date of September 1, 2006, and directed that the amendments be submitted to EPA as a State Implementation Plan Revision.

Minute No. 5 – Public Forum: Mr. Philip Chabot, Mary Gorka and James Lynch appeared before the Board to discuss permitting and air quality concerns of a tub grinder operation near their home. Mr. Paylor informed the Board that the specific operation they were addressing was being monitored and that staff were reviewing policies on the permitting of these types of operations.

Ms. Elizabeth Chimento also appeared during the public forum to discuss Mirant. Ms. Chimento requested that specific studies of the Mirant operations be performed prior to issuance of any new permits. Mr. Paylor briefed the Board on the current status of Mirant's operations and the permitting process.

Minute No. 6 – W & L Asphalt: Mr. Rob Feagins from the Southwest Regional Office presented a report on W & L Asphalt in response to an appearance by Kim and Jim McKenzie at the joint meeting

in April, 2006. Mr. Feagins detailed for the Board the history of the facility, changes the owners had made to the facility to respond to concerns of nearby residents and the results of numerous staff inspections. Jim and Kim McKenzie appeared and discussed their concerns and complaints with the facility. Mr. Ken Taylor and Mr. Jerry Short from W & L Asphalt also addressed the Board concerning the actions they had taken to respond to residents' concerns. The Board suggested that staff review permitting practices for portable facilities to determine if changes to the procedure were necessary and continue to monitor W & L Asphalt's operations. Mr. Paylor responded that staff would continue to monitor the operations and would report to the Board at the next meeting.

Minute No. 7 – Legislative Update: The Board received a report from Ms. Melissa Porterfield on legislation enacted by the 2006 General Assembly. During the discussions, Mr. Moore suggested that a conference be convened to discuss all aspects of the need for and means of controlling mercury emissions.

Minute No. 8 - High Priority Violators (Hpvs) for the Fourth Quarter, 2005, and First Quarter, 2006: Mr. Michael Dowd, Office of Enforcement Coordination, presented a report on high priority violators as contained in the Board book.

Minute No. 9 – Division Director's Report: Mr. James E. Sydnor, Air Division, presented a report to the Board on activities of the Air Division since the Board's March 2006 meeting. In addition to the material provided in the Board Book, Mr. Sydnor briefed the Board on the status of air quality in Virginia, ozone and particulate matter plans for the District of Columbia area that are being developed, on-road emission testing, portable facilities and the mercury study.

Minute No. 10 – Minutes: The Board, on a motion by Mr. Moore, unanimously approved the minutes from the Board's meetings December 8, 2005 and January 27, 2006.

March No. 11 – Future Meetings: The Board set September 25, 2006, and December 6, 2006, as the dates of their future meetings.

Cindy M. Berndt