

**TENTATIVE AGENDA AND MINIBOOK
STATE AIR POLLUTION CONTROL BOARD MEETING
MONDAY, SEPTEMBER 25, 2006**

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

Convene - 10:00 A.M.

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| Case-by-Case Control Technology Determinations (Rev. E04) | Sabasteanski | | A |
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Adjourn

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for their consideration.

For **REGULATORY ACTIONS (adoption, amendment or repeal of regulations)**, public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period and one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS (issuance and amendment of permits and consent special orders)**, the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is a 45-day comment period and one public hearing.

In light of these established procedures, the Board accepts public comment on regulatory actions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for **final** adoption. At that time, those persons who participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of this permit. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then, in accordance with § 2.2-4021, allow others who participated in the prior proceeding (i.e., those who attended the public hearing or commented during the public comment period) up to 3 minutes to exercise their right to respond to the summary of the prior proceeding presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

Pooling Minutes: Those persons who participated in the prior proceeding and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in **rare** instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment period **shall** submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. For a regulatory action should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, Virginia 23240, phone (804) 698-4378; fax (804) 698-4346; e-mail: cumberndt@deq.virginia.gov.

CASE-BY-CASE CONTROL TECHNOLOGY DETERMINATIONS (REVISION E04) - Request for Board Action: Section 182 of the federal Clean Air Act requires that the state implementation plans (SIPs) require reasonably available control technology (RACT) for stationary sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_x). RACT is the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. For moderate ozone nonattainment areas, § 182(b)(2)(C) requires RACT controls on major VOC stationary sources not covered by an existing control technology guideline (non-CTG sources). Section 182(f) requires that control measures required for major VOC sources shall also be required of major NO_x sources.

Applicability thresholds for VOCs and NO_x are established as follows. Section 184 establishes an Ozone Transport Region (OTR) that includes the Consolidated Metropolitan Statistical Area in which the District of Columbia is located. Section 184(b) describes SIP requirements for areas in the OTR, including, in § 184(b)(2), the requirement that any stationary source that emits or has the potential to emit at least 50 tons per year of VOCs is considered to be a major source and subject to the requirements that would be applicable to major sources as if the area were classified as a moderate nonattainment area. Finally, a major stationary source is defined for general application in § 302 as "any facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant"; hence the major source threshold for NO_x is 100 tons per year.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. EPA has added a new subpart X to 40 CFR Part 51, which covers the implementation of the 8-hour ozone standard. It requires that nonattainment areas meet the requirements of § 51.900(f), including RACT and major source applicability cut-offs for purposes of RACT. The rule also specifies dates by when states must submit the RACT SIP, and when RACT must be implemented. The state regulations must be consistent with the federal regulations in order for the state to implement RACT.

The department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

Because the state regulations (i) consist only of changes in style or form, and (ii) are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations, the state regulations are exempt from all state public participation requirements under the provisions of §§ 2.2-4006 A 3 and A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the state public participation requirements and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. In adopting the regulation amendments under the provisions of § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Below is a brief summary of the substantive changes the department is recommending be made.

1. The first step of this action is to clarify and recodify the existing provisions covering case-by-case RACT determinations (Article 4) and create a new Article 51 in which to separate the RACT-specific requirements from the general process requirements of Article 4.
2. The second step of this action is to add the new 8-hour ozone standard requirements to Article 51.

a. The proposed language includes an applicability threshold for VOC RACT of 50 tons per year, a notification date of March 1, 2007, and a compliance date of April 1, 2009. These provisions are intended to carry out the RACT requirements of § 182(b)(2) for major stationary sources as defined in § 182(d) and § 302 as referenced in § 51.912.

b. The requirements for NO_x are the same as discussed above for VOC with one exception. § 302 (j) of the Act states, “Except as otherwise expressly provided, the terms ‘major stationary source’ and ‘major emitting facility’ mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, 100 tons per year or more of any air pollutant.” The OTR provisions of § 184(b)(2) do not affect NO_x. Therefore, the 100 ton per year level specified in § 302 applies to NO_x for the purpose of defining a major source level for determining RACT. Also, the provisions related to presumptive RACT are part of the new 8-hour requirements for NO_x.

REGULATIONS CONCERNING CLEAN AIR MERCURY RULE (9 VAC 5 CHAPTER 140, REV. C06) - Request for Board Action: The 2006 session of the General Assembly resulted in new legislation that requires the Board to adopt new regulations for the control of mercury (Hg) emissions within the Commonwealth, specifically Chapters 867 and 920, 2006 Acts of Assembly. These acts create a new Article 3 (air emissions control) in the Virginia Air Pollution Control Law, with two new sections as follows: § 10.1-1327 (definitions) and § 10.1-1328 (emissions rates and limitations).

Section 10.1-1328 C of the new legislation requires that the Board adopt a "state model rule" or "state trading rule" that will allow the state to implement the EPA Clean Air Mercury Rule (CAMR) and facilitate the trading of Hg allowances within the United States. However, the state model rule must differ from the federal model rule with regard to the size of the new source set-aside. The final state model rule is being presented to the Board at this meeting in order to meet the requirements for the federal section 111(d) plan submittal by the due date of November 17, 2006.

Section 10.1-1328 D of the legislation requires the Board to adopt “a separate state-specific rule” that is not to be submitted to EPA. This state-specific rule is to apply to the owner of one or more electrical generating units that are located within the Commonwealth and whose combined emissions of mercury from such units exceeded 200 pounds in 1999. The legislation also states that the state-specific rule shall differ from the state model rule only in very specific respects. The proposed state-specific rule is scheduled for presentation to the Board at its December 2006 meeting.

On May 18, 2005 (70 FR 28606), EPA published the Clean Air Mercury Rule (CAMR), a rule that will significantly reduce mercury emissions from coal-fired power plants across the country. The rule is designed to reduce the regional deposition of mercury and its subsequent entry into the food chain. The final rule calls for an interim cap of 38 tons per year (tpy) of mercury emissions by 2010 and a second-phase cap of 15 tpy by 2018 (current emissions are approximately 48 tpy). CAMR is effective July 11, 2005, and the plans and associated regulations to implement the CAMR are due November 17, 2006.

The CAMR establishes “standards of performance” limiting mercury emissions from new and existing coal-fired power plants and creates a market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two distinct phases. The first phase cap, due in 2010, is 38 tons and emissions will be reduced by taking advantage of “co-benefit” reductions – that is, mercury reductions achieved by reducing sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions under CAIR. In the second phase, due in 2018, coal-fired power plants will be subject to a second cap, which will reduce emissions to 15 tons upon full implementation.

In the CAMR, EPA has assigned each state an emissions “budget” for mercury, and each state must

submit a plan detailing how it will meet its budget for reducing mercury from coal-fired power plants. The CAMR includes emissions guidelines for the affected coal-fired utility units. States have some flexibility in how they implement the program, but at a minimum, regulations must be at least as stringent as the guidelines.

Virginia's budget portions of the national annual emissions caps are 0.592 tons in 2010 and 0.234 tons in 2018.

The Department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

Because the state regulations are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations, the state regulations are exempt from all state public participation requirements under the provisions of § 2.2-4006 A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the state public participation requirements and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. In adopting the regulation amendments under the provisions of § 2.2-4006, the Board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

This regulatory action encompasses the establishment of one new part to 9 VAC 5-140; which is summarized below:

Hg Budget Trading Program for Coal Fired Electric Steam Generating Units (Part VI)

This part establishes an Hg Budget Trading Program which addresses the following substantive provisions: applicability, permitting, allowance methodology, monitoring, banking, and compliance determination. Virginia's Hg annual budgets are 0.592 tons in 2010 through 2017 and 0.234 tons in 2018 and thereafter.

Beginning January 1, 2010, coal-fired electric generating units with a nameplate capacity greater than 25 MWe will be subject to the provisions of this part. To accommodate the Hg emissions from the affected units, the units are allocated from the budget a specific limited number of allowances (measured in tons per year) during the months of January 1 through December 31, otherwise known as the control period. The Hg allocations are determined through a methodology based upon heat input for existing units and electrical output for new units. January 1, 2001 is the cutoff for determining whether a unit is new or existing. If a unit does not use all of its allowances for a specific control period, those extra tons may be banked for future use or sold. If a unit exceeds the allocated allowances, additional allowances may be purchased or the source may use banked allowances to offset the amount of Hg generated above the allocated allowances.

Sources found to be out of compliance will be forced to surrender allowances for the next year on a ratio of 3:1; i.e., for every ounce over its allocations, three ounces will be forfeited from the next year's allocation.

Emissions will need to be monitored according to 40 CFR Part 75 of the Code of Federal Regulations for all sources subject to the regulation and for any sources wishing to opt into the program.

COMPARISON WITH FEDERAL MODEL RULE

Hg Allowance Allocation Methodology for Electrical Generating Units (EGUs)

In the EPA rule, the baseline heat input is based on fuel weighting. The baseline heat input for combined heat power (CHP) facilities is determined using a different methodology dependent on technology or fuel use and applied only to post 2001 units.

In the Virginia regulation, the baseline heat input is based on one heat rate for all units. The baseline heat input for combined heat power (CHP) facilities is determined using the same methodology for all technologies, fuels and units (both existing and new), consistent with the non-CHP methodology for existing units. These differences are included to (i) ensure that allowances are allocated based on recent levels of plant operation in order to not penalize existing units, (ii) ensure that allowances are allocated based on a level playing field rather than allocating more allowances to units with historically high emissions, and (iii) simplify the implementation of the regulation.

New Unit Set-aside

The EPA rule provides for an initial set-aside of five percent of the Hg trading budget to be set-aside for use by new units in the first five years, dropping to three percent in subsequent years.

The Virginia regulation provides for an initial set-aside of four percent of the Hg trading budget to be set-aside for use by new units in the first five years, dropping to one percent in subsequent years. The percentage for subsequent years is reduced in order to comply with the Code of Virginia.

Efficient Energy/Renewable Energy Unit Set-aside

The EPA rule does not provide for any efficient energy/renewable energy unit set-aside.

The Virginia regulation provides allowances for a set-aside for efficient energy/renewable energy units consisting of one percent of the Hg trading budget per control period, which expire after three years. This set-aside is included to encourage the use of efficient energy/renewable energy.

REPORT TO THE STATE AIR POLLUTION CONTROL BOARD CONCERNING HIGH PRIORITY VIOLATORS (HPVS) FOR THE SECOND QUARTER, 2006

ACTIVE CASES — Table A *			
DEQ Region	Facility Name and location	Brief Description	Status
NRO	Motiva Enterprises, LLC, Fairfax Terminal (petroleum liquid storage and distribution facility)	Alleged exceedances of VOC emission limits contained in Title V permit on approximately 146 days; failure to maintain data related to CEM maintenance, tank throughput, tank inspections, and tank vapor pressure readings; failure to maintain and repair emissions control equipment and other alleged violations of facility's Title V permit	NOV issued 5/26/05; Consent Order dated 4/6/06 imposed a civil charge of \$55,376, of which \$41,500 will go toward a SEP for the installation and operation of VOC CEMs on the facility's vapor recovery unit
NRO	Potomac River	Alleged exceedance of ozone season	NOV issued 9/10/03; revised NOV

	Generating Station/Mirant, Alexandria (coal-fired electric power plant)	NOx emission limit of 1,019 tons contained in state operating permit by over 1,000 tons in 2003	issued 10/20/03; NOV issued by EPA 1/22/04; Amended Consent Decree lodged with U.S. District Court in Alexandria 5/8/06 calling for ozone season and annual NOx emission limits on Potomac River; Mirant system-wide ozone season NOx limits; .15 lbs/MMBtu system-wide ozone season NOx emission rate starting in 2008; system-wide annual NOx limits; \$1mil in coal yard dust/particulate projects at Potomac River; payment of \$500K civil fine; public comment on the decree closed 6/26/06; government plaintiffs are currently analyzing and preparing a response to the public comments
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SWRO	Galax Energy Concepts, LLC Galax, Carroll County (wood burning steam generator)	Alleged violations of lbs/hr and lb/mmBtu emission limits for particulate matter for the facility's 3 boilers resulting from stack tests performed in March '05 under low-load and high-load conditions; exceedances ranged from 15% over the limit to 245% over the limit; failure to comply with regulations for small waste combustors (Rule 46)	NOVs issued 4/14/05 and 6/2/05; pending (plant has been shut down since 9/23/05); EPA issued Notice of Noncompliance 2/22/06; pending
SWRO	Merillat Corporation, Atkins (cabinet manufacturer)	Alleged excess fugitive emissions from baghouse and various violations of MACT subpart JJ including use of non-compliant spray gun, lack of work practice and formulation assessment plans, and failure to submit compliance status reports	NOV issued 3/17/06; pending
SWRO	Merillat Corporation, Atkins (cabinet manufacturer)	Alleged failure to submit initial compliance and status report regarding implementation of work practice standards and semi-annual report required by MACT regulations; use of conventional spray guns in violation of MACT requirements	NOV issued 5/11/06; pending
SWRO	Turman Sawmill, Hillsville	Alleged failure to partially enclose truck load-out area and properly maintain baghouse resulting in excess fugitive emissions; installation of 2 spray application areas w/o a permit; improper open burning	NOV issued 5/2/06; Consent Order dated 6/14/06 imposed civil charge of \$6,200 and implementation of a corrective action plan
TRO	Norfolk Naval Shipyard	Alleged failure to provide VOC content certification for paint batches	NOV issued 4/4/06; pending
TRO	Naval Station Norfolk	Alleged failure to provide VOC content certification for paint batches	NOV issued 4/4/06; pending
VRO	Harrisonburg Resource Recovery Facility (municipal waste incinerator)	Alleged exceedance of HCL emission limits discovered during stack test (25 ppmdv limit – 30.84 ppmdv observed); violations of various requirements of facility's Title V permit, including failure to maintain carbon feed rate necessary to control HAP emissions; failure to notify DEQ of low carbon feed rate; failure to maintain records of daily observations of fabric filters	NOVs issued 7/22/05 and 9/16/06; Consent Order dated 4/13/06 imposed a civil charge of \$45,000, of which \$27,000 goes toward a SEP for the retrofitting at least 24 City of Harrisonburg diesel trucks with devices to reduce particulate exhaust
VRO	Merck & Co., Inc., Rockingham County (pharmaceutical manufacturer)	Alleged exceedance of emission limit for methyl chloride in synthetic minor HAP permit by over 4.5 tons; failure to adequately measure wastewater influent for HAPs as required by permit	NOV issued 12/11/03; Consent Order dated 7/8/05 imposed various injunctive measures to control toxics emissions and a civil charge of \$500,000, of which \$300,000

			goes toward a SEP calling for retrofitting Rockingham County and Harrisonburg City school buses with control devices for particulates and other pollutants
VRO	Valley Proteins, Inc., Linville (rendering facility)	Alleged violation of sulfur in fuel requirements and SO2 emission limits; failure to conduct required visible emission evaluations	NOV issued 2/8/06; pending
WCRO	Magnox Pulaski Inc., Pulaski, Pulaski County (magnetic tape manufacturer)	Numerous alleged violations of Title V permit recordkeeping, monitoring, and operational requirements	NOV issued 5/8/03; Consent Order dated 7/28/04 imposed civil charge of \$20,668 of which \$14,468 goes toward a SEP to reduce CO emissions through process changes
WCRO	Norfolk Southern Railway Company, Roanoke (railway maintenance facility)	Alleged violation NOx emission limits contained in NOx RACT permit by 3 boilers (0.4 lbs/MMBtu limit – test results ranged from 0.614 to 0.428 lbs/MMBtu)	NOV issued 1/19/06; Consent Order dated 8/14/06 imposed a civil charge of \$5,775
WCRO	Roanoke Cement Company, Troutville (cement manufacturing facility)	Alleged violations of stack test protocol, particulate matter control device operating parameters, and recordkeeping requirements	NOV issued 2/2/06; Consent Order dated 7/5/06 imposed a civil charge of \$17,500, of which \$13,125 goes toward a SEP for the installation of a totally enclosed air supported conveyor system the facility's finish mill
WCRO	Southern Finishing Co., Martinsville, Henry County (furniture manufacturer)	Alleged violations of, among other things, MACT subpart JJ work standards and recordkeeping requirements; installation of wood spray booth w/o permit; defective spray booth filters; failure to conduct periodic monitoring and inspections; failure to submit compliance certification and other required reports; failure to complete SEP required by 11/17/03 Consent Order	NOVs issued 4/11/05 and 6/3/04; Consent Order dated 8/31/05 imposed civil fine of \$161,870, of which \$145,683 goes toward an innovative pollution prevention SEP calling for the elimination of hazardous air pollutants (HAPs) within 2 yrs from finishes and coatings used in the facility's wood furniture production lines
WCRO	Southern Finishing Co., Martinsville, Henry County (furniture manufacturer)	Alleged exceedance of VOC emission limits; exceedance of HAP throughput limits; failure to record weekly observation of pressure drop readings for fabric filters in violation of NSPS subpart EE, MACT subpart RRRR, and Title V permit	NOV issued 3/6/06; pending

* Table A includes the following categories of HPV cases:

1) Those initiated by a Notice of Violation (NOV) issued prior to or during the second quarter of 2006 that have not been settled by Consent Order, and;

2) Those settled by Consent Order prior to the second quarter of 2006 where the alleged violator has not complied with substantially all of the terms of the Consent Order.

RESOLVED CASES — Table B **			
DEQ Region	Facility Name and location	Brief Description	Status
SCRO	Intermet Archer Creek Foundry, Campbell County (ductile iron castings manufacturer)	Alleged exceedances of opacity limits at cupola amrex baghouse (5% limit – 12.7% observed) and at ETA baghouse (20% limit – 33.54% observed)	NOV issued 7/19/04; Consent Order dated 9/7/05 imposed civil charge of \$15,170, of which \$11,377 will go toward a SEP for the installation of a baghouse to control particulate and visible emissions from a previously uncontrolled mold cooling operation

** Table B includes HPV cases resolved by Consent Order during the second quarter of 2006 where the alleged violator has complied with substantially all of the terms of the Consent Order.