

**MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
MONDAY, SEPTEMBER 25, 2006**

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

Board Members:

Richard D. Langford, Chairman
John N. Hanson
Bruce C. Buckheit

Vivian E. Thomson, Vice-Chair
Hullihen Williams Moore

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 – Appearance by Representatives of City of Alexandria and Residents:

Representatives of the City of Alexandria appeared before the Board to discuss concerns with the operation of the Potomac River Generating Station's Mirant facility in Alexandria. The City detailed the history of environmental and health issues surrounding operation of the facility. In addition, the City requested that the Board issue an order pursuant to its jurisdiction under Virginia Code Section 10.1-1300 et seq. to the following effect:

1. order the PRGS as of July 1, 2007 to cease and desist from causing or contributing to air pollution episodes or any violation of ambient air quality standards, including for PM2.5, and significant ambient air concentration guidelines for toxic pollutants; and
2. require the PRGS to submit an application for a construction permit and impose a comprehensive and rigorous review for air pollution impacts and pollutant control technology consistent with provisions of Article 9 of the Board's regulations, 9 VAC 5-80-2000 et seq., including, but not limited to, the submission by the PRGS of plans, specifications and data as set out in 9 VAC 5-80-2020 and -2040; and
3. Establish a local air pollution control district comprising affected areas of Alexandria City and a local air pollution control committee to monitor and report to the Board the activities and compliance of the PRGS with the Board's regulations and orders.

After the City's presentation, the Board heard from 21 citizens, including legislators and neighbors of the facility. All of the speakers expressed concern with the continued operation of the facility on their health and quality of life.

The Board, after much discussion, on a motion by Mr. Moore, unanimously directed that the Board make the decisions relating to the permitting of the Mirant facility and asked the staff to advise the Board on how the Board should consider acting on the City's request.

Minute No. 2 – Regulations Concerning Clean Air Mercury Rule (9 VAC 5 Chapter 140, Rev. C06) – Mr. Robert A. Mann, Director, Office of Air Regulatory Development, presented amendments to the air regulations concerning mercury (Hg) emissions (Rev. C06). Mr. Mann informed the Board that the 2006 session of the General Assembly passed legislation that requires the Board to adopt new regulations for the control of 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).

Mr. Mann explained that 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. Mr. Mann explained that the rule would establish, in 9 VAC 5-140, an Hg Budget Trading Program which addresses the following substantive provisions: applicability, permitting, allowance methodology, monitoring, banking, and compliance determination. In addition, Mr. Mann compared the federal model rule for the rule provided to the Board, specifically discussing the Hg allowance allocation methodology for electrical generating units, the new unit set-aside, and efficient energy/renewable energy unit set-aside.

Based on the board book material, staff presentation and Board discussion, on a motion by Mr. Moore, the Board decided (i) not to act on the state model rule; (ii) directed the Department prepare the state model rule and the state-specific rule and bring as a package, presumably in January, 2007, to the Board for consideration; and (iii) indicated that the state model rule may still be adopted as a final exempt at the January, 2007, meeting. Further, the Board asked the Director to request an opinion from the Attorney General on the Board's authority with respect to subsection C, D and F of § 10.1-1328 of the Code of Virginia and inquire whether certain provisions of the statute are preempted by the EPA rule or may violate the commerce clause of the constitution. The Board also requested that the Department provide a status report at the December meeting on the review of mercury emissions from non-electric generating units.

Minute No. 3 - Case-By-Case Control Technology Determinations (Revision E04) – Ms. Karen G. Sabasteanski, Office of Air Regulatory Development, presented amendments to the air regulations concerning reasonably available control technology (RACT) (Rev. E04) to the Board for final adoption. Ms. Sabasteanski explained that the changes would (i) 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 and (ii) add the new 8-hour ozone standard requirements to Article 51. Ms. Sabasteanski also reviewed revisions to the text made since the Board book material was provided to the Board.

Based on the Board book material, including revisions presented at the meeting, the staff presentation and Board discussion, the Board, on a motion by Ms. Thomson, (i) adopted the proposal, with an effective date of December 1, 2006; (ii) affirmed that it 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 EPA as a State Implementation Plan Revision.

Minute No. 4 – Division Director's Report on Activities: Mr. James E. Sydnor, Director, Air Division, presented a report on activities. In addition to the material provided in the board book, Mr.

Sydnor briefed the Board on air quality status across the Commonwealth, the 8-hour ozone and PM_{2.5} plans for the District of Columbia area, the on road emissions testing program and updated the Board on permitting, regional haze, PM_{2.5} and mercury impact assessment.

Minute 5 - Report to the State Air Pollution Control Board Concerning High Priority Violators (HPVs) For the Second Quarter, 2006: The Board received a report on high priority violators for the second quarter of 2006 from Mr. Michael G. Dowd, Office of Enforcement.

Minute 6 – Minutes: The Board, on a motion by Ms. Thomson, approved the minutes from the June 21, 2006.

Minute 7 – Future Meetings: The Board confirmed, December 6, 2006, as the date of their next meeting.

Cindy M. Berndt