

MINUTES

STATE AIR POLLUTION CONTROL BOARD MEETING
WEDNESDAY, DECEMBER 6, 2006

SHERATON RICHMOND WEST
6624 WEST BROAD STREET
RICHMOND, VIRGINIA

Board Members Present:

Richard D. Langford, Chair
Hullihen W. Moore
Bruce C. Buckheit

Vivian E. Thomson, Vice-Chair
John N. Hanson

Department of Environmental Quality:

David K. Paylor, Director
Cindy M. Berndt

Rickard F. Weeks, Chief Deputy

Attorney General's Office:

Carl Josephson
Senior Assistant Attorney General

The meeting was convened at 9:10 a.m., recessed at 12:09 p.m., reconvened at 1:00 p.m., and adjourned at 4:55. p.m.

Minute No. 1 – Variance Concerning Open Burning (9 VAC 5 Chapter 240, Rev. EV) - Request to Promulgate Proposal for Public Comment: Ms. Doris McLeod, Office of Air Data Analysis and Planning, presented a proposed variance to the open burning rule. Ms. McLeod informed the Board that amendments to the Open Burning Rule concerning seasonal restriction requirements that the Board adopted at its June 21, 2006, meeting became effective on October 18, 2006. Ms. McLeod explained that comments were received during the public comment period on the Hampton Roads redesignation process requesting that a seasonal restrictions be phased in. Based on the citizen's testimony, discussions with local government officials, and the fact that the emission reduction credits are not used until 2011, providing a variance to the open burning seasonal restrictions for two years is a prudent approach to its implementation.

Ms. McLeod advised the Board that the proposed variance provides relief from the seasonal restrictions in 9 VAC 5-40-5630 A 8 and 10 for the following localities in the Hampton Roads Volatile Organic Compound Emissions Control Area: County of Gloucester and the County of Isle of Wight; and that the variance would no longer be in effect after December 31, 2008.

Based on the Board book material, staff presentation and Board discussion, on a motion by Mr. Hanson, unanimously authorized public comment on the proposed variance.

Minute No. 2 – High Priority Violators Report: Mr. Michael Dowd, Office of Enforcement Coordination, presented a report on high priority violators for the third quarter of 2006.

Minute No. 3 – Minutes: The Board, on a motion by Mr. Moore, unanimously approved the minutes from the meeting on September 25, 2006.

Minute No. 4 – Public Forum: Ms. Michelle Merkel from the Environmental Integrity Project

appeared to ask the Board to have the Department of Environmental Quality follow-up on a pollution complaint filed regarding Smurfit Stone West Point. Ms. Merkel provided the Board the details of the complaint and asked that the Board ensure that the existing permit and consent decree re sufficient to protect air quality. Mr. Chuck Turner from the Department's Piedmont Regional Office provided the Board with current compliance and inspection results and advised that the Department was unable to determine that there were any violations. The Board requested that the Department investigate the incident further and report back. The Board asked that the staff ask local residents if they recalled any thing out of the ordinary that day and review the permit and consent decree to determine its adequacy.

Mr. Daniel Van Orman from the Environmental Integrity Project appeared to present the Board with a national study on Title V fees and where Virginia stands in comparison to other states. The Board asked staff to review the report and report back to the Board at a future meeting.

Minute No. 5 – State Advisory Board on Air Pollution: Mr. Dan Holmes introduced the reports from the State Advisory Board on Air Pollution. He explained that three of the four reports would be presented. The final report on Greenhouse Gases would be presented at a later date. The Board received the reports on Mercury from Non-EGUs, Public Health and Air Pollution and Biodiesel Fuels.

Minute No. 6 - Final Regulations Concerning Clean Air Interstate Rule (9 VAC 5 Chapter 140, Rev. E05) - Public Participation Report and Request for Board Action: Ms. Mary E. Major, Office of Air Regulatory Development, presented the final Clean Air Interstate Rule (CAIR) for the Board's consideration. Ms. Major explained that CAIR was 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. The plans and associated regulations to implement the CAIR were due September 11, 2006. Ms. Major briefed the Board on the proposed regulation, the public participation results, and the changes to the proposed being recommended by the Department.

The Board then received comments from Lowell Smith, Lenny Dupuis, Beth Barfield and Debra Jacobsen on the final regulation being presented to the Board.

After the public comment opportunity, Ms. Doris McLeod from the Office of Air Data Analysis and Planning reviewed for the Board, the results of the Department's analysis of the effect of heat input versus heat output based allocation methodologies.

After a recess and other agenda items, the Board continued their question and discussion of the draft final regulation.

Based on the Board book material, staff presentation and Board discussion, Ms. Thomson moved to adopt the staff recommendations that the Board adopt the draft regulation with an effective date as provided by the Administrative Process Act and direct staff to submit the adopted regulation to the U.S. Environmental Protection Agency as a State Implementation Plan revision. The Board, on a motion by Ms. Thomson, unanimously amended the regulation to require that allowances for EERE projects be retired. The Board, on a motion by Mr. Moore, unanimously amended the regulation to limit the applicability of the compliance demonstrations for nonattainment areas to units within a source. The Board, on a motion by Mr. Moore, unanimously amended the regulation to change the due dates for submittal of the compliance demonstrations for nonattainment areas. The Board then unanimously adopted the staff recommendations, adopting the amended regulation.

Before proceeding to the next agenda item the Board asked for several modifications to the comment and response document to be published with the final regulation, including revisions to reflect the amendments made to the draft final regulation. Also, the Board, on a motion by Mr. Buckheit,

unanimously stated that in passing the regulation the Board's authority under other provisions of Virginia Code to act to impose more stringent caps or emission limits on any source within the Commonwealth is not restrained by the adoption of the Clean Air Interstate Rule.

Minute No. 7 – Joint Commission on Administrative Rules Meeting: Mr. Langford briefed the Board on his appearance before the Joint Commission on Administrative Rules (JCAR).

Minute No. 8 – Clean Air Interstate Rule – Allocation Methodologies: The Board asked staff to develop a position paper on the pros and cons of transition to heat output based allocation methodology as well as look at net output versus gross output.

Minute No. 9 – State Implementation Plan: Board asked for a report on the State Implementation Plan submittals due in the summer.

Cindy M. Berndt