

## MINUTES

### STATE AIR POLLUTION CONTROL BOARD MEETING MONDAY, MARCH 26, 2007

#### GENERAL ASSEMBLY BUILDING HOUSE ROOM C 9<sup>TH</sup> & BROAD STREETS 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

**Attorney General's Office:**

Carl Josephson  
Senior Assistant Attorney General

The meeting was convened at 9:50 a.m., recessed at 12:07 p.m., reconvened at 1:05 p.m., recessed at 2:40 p.m., reconvened at 2:50 p.m. and adjourned at 5:15 p.m.

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**Minute No. 1 – State Advisory Board on Air Pollution – Status Report:** Mr. Richard D. Langford briefed the Board on the activities of the State Advisory Board on Air Pollution at their last meeting. He informed the Board that the projects for the upcoming year are a continuation of the greenhouse gas study, reviewing issues with tire-derived fuels, reviewing potential for recommendations on vehicle emissions (California Standard) and they will be supporting the mercury conference to be held later in the year.

**Minute No. 2 - Variance Concerning Open Burning (9 VAC 5 Chapter 240, Rev. EV) - Public Participation Report and Request for Board Action:** Mr. James E. Sydnor and Ms. Doris McLeod presented a variance to the Open Burning Rule (Rule 4-40) for final adoption. They explained that the variance provides relief from the seasonal restrictions in 9 VAC 5-40-5630 A 8 and 10 for Gloucester County in the Hampton Roads Volatile Organic Compound Emissions Control Area until December 31, 2008. Ms. McLeod provided the Board with a summary of the public comments received and a response to those comments. She also explained that the draft final regulation differed from the proposed in two areas. Specifically, the County of Isle of Wight had been removed from the variance in response to the County's comments and a provision had been added to require compliance with the order granting the variance.

Ms. Amy Ring from Isle of Wight County appeared to state the County's support for removing the County from the variance.

Based on the Board book material, the staff presentation and Board discussion, on a motion by Mr. Buckheit, the Board unanimously (i) issued the Order, to be effective upon signature of the Chairman, which grants the variance (9 VAC 5 Chapter 240) and (ii) adopted the variance, with an effective date of May 1, 2007, or later if necessary to comply with the Administrative Process Act.

**Minute No. 3 - Federal Documents Incorporated by Reference (9 VAC 5 Chapters 50 and 60, Rev. E06) - Request for Board Action:** Mr. James E. Sydnor and Ms. Karen Sabasteanski presented amendments to the regulations for the control and abatement of air pollution to incorporate newly promulgated federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and national emission standards for hazardous air pollutants for source categories (Maximum Achievable Control Technology, or MACT), Rules 5-5, 6-1, and Rule 6-2, respectively, of the board's regulations. Ms. Sabasteanski explained that the amendments would:

1. For NSPS: incorporate one NSPS: Subpart EEEE - Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced On or After June 16, 2006 (40 CFR 60.2880 through 60.2977) and would update the date of the Code of Federal Regulations book being incorporated by reference;
2. For NESHAP: no new NESHAPs are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated; and
3. For MACT: no new MACT standards are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated; the reference to Subpart EEE (Hazardous Waste Incinerators) has been revised to include references to several new sections; and Subpart C (list of hazardous air pollutants, petitions process, lesser quantity designations, and source category list) has been revised to include the deletion of methyl ethyl ketone (MEK, 2-Butanone) at 40 CFR 63.61.

Ms. Sabasteanski explained that adoption of the amendments are exempt from all state public participation requirements under the Administrative Process Act and are not subject to federal public participation requirements.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Thomson, unanimously adopted the proposal with an effective date of June 1, 2007; affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision; and directed that the amendments be submitted to EPA in order to retain delegation of authority to enforce the EPA regulations.

**Minute No. 4 - Transportation Conformity (9 VAC 5 Chapter 151, Rev. M04) - Request for Board Action:** Mr. James E. Sydnor and Ms. Mary E. Major presented a new regulation for final action that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA at Subpart A of 40 CFR Part 93. They explained that metropolitan planning organizations and the United States Department of Transportation must make determinations that federally-funded transportation plans, programs, and projects conform to Virginia's SIP. In order to implement the federal transportation conformity requirements, Chapter 150 of the Board's regulations is being replaced with a new Chapter 151, which includes the most recent federal revisions.

Ms. Major briefed the Board on the substantive provisions of the regulation and she explained that adoption of the regulation is exempt from all state public participation requirements under the Administrative Process Act.

Based on the Board book material, the staff presentation and Board discussion, on a motion by Mr. Buckheit, the Board unanimously adopted the proposal, with an effective date as provided in the Administrative Process Act; affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision; and directed that the regulation be submitted to EPA as a SIP revision.

**Minute No. 5 – Public Forum:** No speakers.

**Minute No. 6 – Mirant Potomac River Generating Station:** Mr. James E. Sydnor introduced the Mirant Potomac River Generating Station agenda item and briefly described the facility and significant historical events. Mr. Sydnor then introduced Mr. Michael Dowd, Director, Division of Enforcement, to discuss the proposed consent order that had been negotiated with Mirant officials. Mr. Dowd informed the Board that the consent order would serve as a bridge to regulate emissions from the plant from expiration of the U.S. Environmental Protection Agency's (EPA) administrative consent order until issuance of a permit with NAAQS-protective emissions limits. Ms. Jaime Bower then briefed the Board on three permitting options, discussed different types of permits and Mirant's proposed stack merge project and permit applicability. Mr. Troy Breathwaite presented the Board with information on evaluations of toxic emissions and fugitive emissions, as well as air quality analyses and future applicable requirements under the Clean Air Interstate Rule and Clean Air Mercury Rule.

The Board then heard from representatives of the City of Alexandria (William Skrabak, David Sullivan, Malay Jindal, John Britton and Redella "Del" Pepper), from several citizens (Cale Jaffe of the Southern Environmental Law Center, Elizabeth Chimento, Anna Prados, Mary Harris and Poul Hertel) and representatives of the Mirant Potomac River Generating Station (Bob Driscoll, Dave Cramer, Kevin Finto, Mike Stonefield and David Shea).

After much discussion and questions by the Board, the Board, on a motion by Mr. Buckheit, (i) set aside the proposed consent order in its current form; (ii) directed the Department to negotiate with Mirant and the City of Alexandria between now and April 9 to see if an agreement, acceptable to all three parties could be reached and submitted to the Board for consideration at a meeting on April 10 in Lexington (teleconference meeting); and (iii) directed that the Department investigate, on a parallel track, a straight administrative process (the exact form of which would be determined later) in the event an agreed upon order is not reached by the parties in order to make sure that there might be something in place on June 2. (The vote was 4 to 1 with Mr. Langford voting no.)

**Minute No. 7 – High Priority Violators:** The Board received a report from Michael Dowd, Director, Division of Enforcement, on high priority violators.

**Minute No. 8 – Minutes:** The Board, on a motion by Mr. Hanson, unanimously approved the minutes from the Board's meeting on December 6, 2007. The Board, on a motion by Mr. Buckheit, unanimously approved the minutes from the Board's meeting on January 16, 2007.

**Minute No. 9 – Other Business:** Of the items listed in the Division Director's Report on the agenda, the Board asked that the presentations on CAIR allocations and reactive mercury emissions be placed on the agenda of a future meeting. The remaining items have been received and no further action is necessary at this time.

**Minutes No. 10 - Future Meetings:** The Board confirmed the Joint Meeting date of April 10, 2007, in Lexington and the next regular meeting date of May 23, 2007. In addition, the Board scheduled a special meeting on April 10, 2007, in the morning.

*Cindy M. Berndt*

Cindy M. Berndt

Approved Minute # 6  
May 23, 2007



**STATE AIR POLLUTION CONTROL BOARD**

**AN ORDER**

**GRANTING A VARIANCE FOR**

**County of Gloucester, Virginia**

**SECTION A: PURPOSE**

This Order of the State Air Pollution Control Board (SAPCB) is issued for the purpose of granting a variance for affected persons throughout the County of Gloucester for open burning under this order in lieu of the SAPCB Regulations pertaining to open burning (Article 40 of 9 VAC 5 Chapter 40, Rule 4-40). The goal of this variance is to provide temporary relief from certain seasonal restrictions for this locality, which is located in the Hampton Roads Volatile Organic Compound Emissions Control Area, in order to be consistent with the area's maintenance plan requirements.

**SECTION B: REFERENCES**

All terms not defined here shall have the meaning given them in the variance, unless otherwise required by context. The following words and terms have the meanings assigned to them below:

"Affected person" means any person who permits or engages in open burning or who permits or engages in burning using special incineration devices under the provisions of 9 VAC 5-40-5630 A 8 and 10.

"Code" means the Code of Virginia.

"County of Gloucester" means the geographical area within the County of Gloucester as established by Article VII of the Constitution of Virginia and as governed by the applicable provisions of Title 15.2 of the Code of Virginia.

"Department" means the Department of Environmental Quality, an agency of the Commonwealth described in § 10.1-1183 of the Code.

"Order" means this order granting the variance.

"SAPCB Regulations" means 9 VAC 5 Chapters 10 through 80.

"VAC" or "9 VAC" means Title 9 of the Virginia Administrative Code. This title comprises the environmental regulations for the Commonwealth of Virginia, including the regulations of the State Air Pollution Control Board.

"Variance" means 9 VAC 5 Chapter 240 (9 VAC 5-240).

### **SECTION C: AUTHORITY**

1. Chapter 13 of Title 10.1 of the Code creates the board and vests in it the authority to supervise and control various aspects of air pollution in the Commonwealth. Among the board's powers is the authority to promulgate regulations "abating, controlling and prohibiting" air pollution, found in § 10.1-1308 of the Code.

2. Pursuant to its authority, the board has promulgated the SAPCB Regulations, which first took effect March 17, 1972, and have been amended.

3. Pursuant to §§ 10.1-1307 C and 10.1-1307 E of the Virginia Air Pollution Control Law and as set forth in 9 VAC 5-170-140 and 9 VAC 5-170-170, the board may in its discretion grant local variances to any provisions of SAPCB regulations after an investigation and public hearing and shall grant the variance by issuing an order.

4. Pursuant to § 10.1-1307 D and § 10.1-1309 of the Code, the board has the authority to issue orders to diminish or abate the causes of air pollution and to enforce its rules and regulations. Orders of the board are enforceable pursuant to §§ 10.1-1316 and 10.1-1320 of the Code.

### **SECTION D: VARIANCE**

The board has carefully reviewed all of the relevant materials in this matter, including the information provided by the public through oral and written comments and the presentation of the department staff at the March 2007 meeting of the board, including the information related to the special considerations.

In consideration of all of the above and pursuant to § 10.1-1307 C of the Code and 9 VAC 5-170-140, the board finds that the granting of a variance for the County of Gloucester is appropriate and warranted by local conditions. In support of this finding, the board accepts and adopts the department's report as a basis for its decision. Accordingly, the board grants affected persons within the County of Gloucester a variance from the seasonal restrictions in 9 VAC 5-40-5630 A 8 and 10 under the following terms and conditions:

1. This order shall become effective on the date on which it is signed by the chair of the State Air Pollution Control Board.

2. This variance shall become effective May 1, 2007. This variance shall not be applicable after December 31, 2008.

3. Affected persons within the County of Gloucester shall comply with the terms and conditions of the variance.

4. The board may modify, rewrite, or amend this order or the variance with the consent of the County of Gloucester, for good cause shown by the County of Gloucester, or on its own motion after notice and a public comment period and hearing in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law and 9 VAC 5-170-140 provided approval of the changes is accomplished in accordance with the regulations of the board and the Administrative Process Act (§ 2.2-4000 et seq.).

5. The board may revoke this order or the variance in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law and 9 VAC 5-170-140 for any reason permitted under its statutory authority.

#### **SECTION E: APPEALS**

This order is being executed to establish the variance, which is a regulation under the Administrative Process Act; therefore, all appeals of this order or the variance must be under the provisions of Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

#### **SECTION F: FAILURE TO COMPLY**

Failure by affected persons within the County of Gloucester to comply with any of the terms of the variance shall constitute a violation of an order of the board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the board as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

It is so ordered:

#### **STATE AIR POLLUTION CONTROL BOARD OF THE COMMONWEALTH OF VIRGINIA**

3/26/07  
(date)

BY: Richard D. Langford  
Chair

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