

TENTATIVE AGENDA AND MINIBOOK
 STATE AIR POLLUTION CONTROL BOARD MEETING
 THURSDAY, OCTOBER 23, 2008
 House Room C
 General Assembly Building
 9th & Broad Streets
 Richmond, Virginia

Convene – 9:30 a.m.

			TAB
I.	Minutes (Nov. 30, 2007; Jan. 25, Mar. 20, June 24-25 and July 30, 2008)		A
II.	Final Regulations		
	Major New Source Review (A08) – Exempt	Sabasteanski	B
	Volatile Organic Compound Definition (H07) – Fast-Track	Sabasteanski	C
	Transportation Conformity (B07) – Exempt	Major	D
	Motor Vehicle Emissions in Northern Virginia Area (MM) – Exempt	Major	E
	NOx SIP Call Budget (K08) – Exempt	Major	F
	Minor New Source Review Program (J08) – Exempt	Mann	G
	Permit Actions before the Board (G08) – Exempt	Mann	H
III.	Proposed Regulations		
	Consumer and Commercial Products (D06)	Graham	I
IV.	High Priority Violators Report	Davenport	
V.	Public Forum		
VI.	Other Business		
	Ozone Non-Attainment Report	Ballou	
	Air Pollution Control District/Committee – City of Alexandria	Dowd	
	Mercury Study Report		
	Future Meetings (December 15-16, 2008)		

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 on 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), 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 usually a 45-day comment period and one public hearing.

In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, 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 commented at the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the comments 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 allow others who commented during the prior proceeding (i.e., those who commented at the public hearing or 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 commented during the public hearing or public comment period 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 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: cmberndt@deq.virginia.gov.

Major New Source Review (Rev. A08) - Request for Board Action: On November 29, 2005, EPA promulgated its final rule for the Phase II implementation of the 8-hour ozone standard (70 FR 71612). Among other sections, the rule affects the prevention of significant deterioration (PSD) new source review (NSR) regulations of 40 CFR 51.165 and 40 CFR 51.166 by revising the definitions of "major modification," "major stationary source," "regulated NSR pollutant" and "significant," and the list of

exempted facilities, to specify that nitrogen oxides (NO_x) are a precursor of ozone in addition to volatile organic compounds (VOCs). In Virginia, where the state is administering the NSR program under an approved SIP, the state must adopt and submit revisions to the SIP to reflect the rule revisions. The revised SIP should be the same as or equivalent to the revised federal program. 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.

Below is a brief summary of the draft final regulation.

1. The definition of “major modification” has been modified to indicate that any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for NO_x in addition to VOCs is considered significant for ozone. [9 VAC 5-80-1615 C, page 13]
2. The definition of “major stationary source” has been modified to indicate that a major stationary source that is significant for VOCs or NO_x is considered significant for ozone. [9 VAC 5-80-1615 C, page 16]
3. The definition of “regulated NSR pollutant” has been modified to include NO_x as an example of a precursor of ozone in addition to VOCs. [9 VAC 5-80-1615 C, page 22]
4. The definition of “significant” has been modified to include a significant emissions rate of NO_x in addition to VOCs for ozone. [9 VAC 5-80-1615 C, page 24]
5. The list of air quality impacts has been modified to include 100 tons per year or more of NO_x in addition to VOCs as a potential trigger for performing an ambient impact analysis. [9 VAC 5-80-1695 E 1, page 28]

Definition of Volatile Organic Compound (9VAC5-10, General Definitions, Rev. H07) - Request to Publish Proposal for Public Comment and Use the Fast Track Process: On January 18, 2007 (72 FR 2193), EPA revised the definition of VOC in 40 CFR 51.100 to exclude a compound known as (1)1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300) from the definition of VOC. This exclusion is accomplished by adding the substance to a list of substances not considered to be a VOC. This change to the exemption list became effective on January 18, 2007.

In order to maintain consistency with the federal requirements for reducing VOCs and therefore ozone, Virginia's definition of VOC must be consistent with EPA's definition.

The department is requesting approval of a proposal for public comment that meets federal statutory and regulatory requirements. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

The department did not issue a notice of intended regulatory action nor conduct any associated public participation activities because we are requesting that the board adopt the amendments as final regulations provided they complete the fast-track rulemaking process as provided in the Code of Virginia. Under the provisions of §2.2-4012.1 of the Administrative Process Act, agencies may use the fast-track rulemaking process for regulations that are expected to be noncontroversial. The reasons for using the fast-track rulemaking process may be found in the agency background document.

Under the fast-track process, the proposal will still be subject to a 30-day public comment period. If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the Department will (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Otherwise, the regulation becomes effective 15 days after the end of the public comment period.

The list of substances not considered to be VOCs in Virginia has been revised to include (1)1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300).

Transportation Conformity (9 VAC 5 Chapter 151, Rev. B07) - Request for Board Action: The federal Clean Air Act requires that federally-funded transportation plans, programs and projects conform to state or federal air quality implementation plans. 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. "Conformity" means that the activity conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard in any area, (ii) increase the frequency or severity of any existing violation of any standard in any area, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Under 40 CFR 51.390, Virginia is required to submit to the U.S. Environmental Protection Agency (EPA) a revision to the SIP that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA at 40 CFR Part 93.

The Board adopted a transportation conformity regulation (9 VAC 5-151) that was consistent with the federal requirements of 40 CFR Part 93 in March of 2007. EPA promulgated amendments to the federal transportation regulation on January 24, 2008 (73 FR 4420). In this action, EPA amended the transportation conformity rule to finalize provisions that were proposed on May 2, 2007. Most of the amendments are necessary to make the rule consistent with Clean Air Act section 176(c), as amended by SAFETEA-LU on August 10, 2005 (Pub. L.109-59). The changes: (i) provide more time for state and local governments to meet conformity requirements, (ii) provide a one-year grace period before the consequences of not meeting certain conformity requirements apply, (iii) allow the option of shortening the timeframe of conformity determinations, and (iv) streamline other provisions. This final rule also includes minor amendments that are not related to SAFETEA-LU, such as allowing the Department of Transportation (DOT) to make categorical hot-spot findings for appropriate projects in carbon monoxide nonattainment and maintenance areas.

In order to implement the federal transportation conformity requirements, the Virginia regulation must reflect the recent revisions made to the federal regulations. To this end, 9 VAC 5 Chapter 151 of the regulations needs to be amended to include the most recent federal revisions.

The Department is requesting approval of a draft final regulation that meets federal statutory and regulatory requirements. Approval of the regulation 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 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.

Below is a brief summary of the substantive provisions.

1. The definition section [9 VAC 5-151-10] defines terms unique to the article. Several definitions have been changed to comply with SAFETEA-LU.
2. The applicability section [9 VAC 5-151-20] identifies specific actions and criteria for conformity determinations with regard to federal highway and federal transportation projects and defines the criteria for applicability in nonattainment and maintenance areas. Changes have been made to change the reference to “sulfur oxides” to “sulfur dioxide” and include language that ensures that conformity determinations pertain through the last year of a maintenance area’s approved maintenance plan as required under SAFETEA-LU.
3. Authority of board and DEQ section [9 VAC 5-151-30] identifies the specific responsibilities of the Board and the DEQ Director with respect to Virginia state law. The section also identifies the responsibility of the DEQ director regarding enforcement, administrative authority. Federal requirements mandate that the federal requirements and standards be enforceable by the state. There are no changes to this section.
4. The general section [9 VAC 5-51-40] incorporates by reference portions of the EPA Regulation for Transportation Conformity (40 CFR Part 93) into the state regulation. This section also indicates that the specific version of the provisions adopted by reference are those contained in the most currently available CFR in effect as published on July 1, 2006. Changes have been made to update the CFR reference to July 1, 2008, which includes the recent Federal Register notice of January 24, 2008.
5. The list of designated provisions section [9 VAC 5-151-50] lists each transportation conformity provision adopted by EPA and incorporated into the regulation including the section number and title. There are no changes to this section. However, there are changes to the EPA regulations incorporated by reference and amended by the January 24, 2008 FR notice, which are summarized below:

Section	Title
40 CFR 93.104	Frequency of conformity determinations.
40 CFR 93.106	Content of transportation plans and timeframe of conformity determinations.
40 CFR 93.109	Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

TIP.	40 CFR 93.114	Criteria and procedures: Currently conforming transportation plan and
	40 CFR 93.115	Criteria and procedures: Projects from a transportation plan and TIP.
	40 CFR 93.118	Criteria and procedures: Motor vehicle emissions budget.
vehicle emissions budgets.	40 CFR 93.119	Criteria and procedures: Interim emissions in areas without motor
	40 CFR 93.120	Consequences of control strategy implementation plan failures.
funds designated under Title 23 USC or the Federal Transit Laws.	40 CFR 93.121	Requirements for adoption or approval of projects by other recipients of
concentrations (hot-spot analysis).	40 CFR 93.123	Procedures for determining localized CO, PM ₁₀ , and PM _{2.5}
	40 CFR 93.126	Exempt projects.

- Section 93.104 was changed to require MPOs and USDOT to determine conformity of transportation plans (TPs) and transportation improvement plans (TIPs) every four years as required under SAFETEA-LU instead of every three years. In addition, EPA is adding a one-year grace period before a conformity lapse occurs as required under SAFETEA-LU when an area misses an applicable deadline.
- Section 93.106 was changed to conform to SAFETEA-LU to allow MPOs with an adequate or approved second maintenance plan to shorten the timeframe covered by a conformity determination to extend only through the last year of the implementation plan as is required under SAFETEA-LU.
- Section 93.109 was changed to provide rural nonattainment and maintenance areas the flexibility to shorten the conformity timeframe in the same manner as metropolitan areas. Language is included that stipulates that the entity that would make the election to shorten the timeframe would be the state department of transportation as rural areas don't have MPOs. In addition, provisions which allowed 8-hour ozone areas to use the interim emissions tests for conformity instead of the 1-hour ozone SIP budgets is repealed as these provisions were vacated by the US Court of Appeals for the District of Columbia Circuit and remanded to EPA.
- Section 93.114 was changed by including a reference to §93.104 to address the one-year grace period before a conformity lapse occurs as required under SAFETEA-LU.
- Section 93.115 was changed by including a reference to §93.104 to address the one-year grace period before a conformity lapse occurs as required under SAFETEA-LU.
- Section 93.118 was changed to comply with changes to §93.106 pertaining to the shortening of the conformity timeframe which apply to both rural and urban areas.
- Section 93.119 was changed to comply with changes to §93.106 pertaining to the shortening of the conformity timeframe which apply to both rural and urban areas.
- Section 93.120 was changed to permit projects within the first four years of the conformity transportation plan and TIP, rather than the first three years, to proceed after final EPA disapproval of a control strategy SIP without a protective finding. These changes correspond to the timing changes in §93.104 and provide smooth transition to the planning requirements contained within SAFETEA-LU.

- Section 93.121 was changed by including a reference to § 93.104 to address the one-year grace period before a conformity lapse occurs as required under SAFETEA-LU.
- Section 93.123 was changed to permit USDOT, in consultation with EPA, to make a “categorical hot-spot finding” for project-level conformity determinations in CO nonattainment and maintenance areas where modeling shows that such projects will not cause or contribute to new or worsened air quality violations. This action will negate the necessity to conduct additional analysis. This is currently the case for conformity determinations in PM_{2.5} and PM₁₀ nonattainment and maintenance areas.
- Section 93.126 was changed to update several terms (see below) used in “Table 2, Exempt Projects” under the category of “Safety”.

Old Term: Hazard elimination program. New Term: Projects that correct improve or eliminate a hazardous location or feature.

Old Term: Safety improvement program. New Term: Highway Safety Improvement Program implementation.

Old Term: Pavement marking demonstration. New Term: Pavement marking.

6. Word or phrase substitutions section [9 VAC 5-151-60] sets forth changes to the regulations incorporated by reference, consisting of the identification of: (i) Virginia-specific terms to be used throughout the regulations to meet the requirements of the Virginia Registrar, and (ii) format changes necessary to ensure that the regulation refers to Virginia regulations not federal regulations in order to meet the federal requirement that the regulation be enforceable by the state. There are no changes to this section.

7. Exemptions to the designated provisions incorporated by reference section [9 VAC 5-151-61] identifies specific references in the federal regulations (40 CFR Part 93) that are not included by reference in the Virginia program. At the time of adoption these federal provisions were under litigation in the US Court of Appeals for the District of Columbia Circuit. The Court vacated the federal provisions making the exemptions unnecessary; therefore, this section has been repealed.

8. The consultation section [9 VAC 5-151-70] outlines specifically how the various government agencies, federal, state and local, will interact with and consult with each other and the general public in the development of transportation plans and associated conformity determinations. Changes have been made to remove the reference to the unified work plans since these plans are unique to the individual local governments and should not be included in the larger consultation process.

Control of Motor Vehicle Emissions in the Northern Virginia Area (9 VAC 5 Chapter 91, Rev. MM) - Request for Board Action: Chapter 915 of the 2004 Acts of the Assembly amends and reenacts §§ 46.2-1176 and 46.2-1178 of the Code of Virginia, relating to the emissions inspection program, specifically hybrid vehicles.

The Va Code, §46.2-1178 B 1, has been revised to exempt hybrid vehicles meeting specific EPA criteria and states: The emissions inspection program provided for in this article shall not apply to any qualified hybrid motor vehicle if such vehicle obtains a rating from the U.S. Environmental Protection Agency of at least 50 miles per gallon during city fuel economy tests unless remote sensing devices indicate the hybrid vehicle may not meet current emissions standards.

§46.2-1178 B 1 also directs the Board to adopt such regulations as may be required to implement this exemption. Thus, the Regulation Concerning the Control of Motor Vehicle Emissions in the Northern

Virginia Area (9VAC5 Chapter 91) needs to be amended to incorporate the requirements of Chapter 915, 2004 Acts of the Assembly.

The Department is requesting approval of draft final regulation amendments that meet state and federal statutory and regulatory requirements. Approval of the amendments will ensure that the Board's regulations are consistent with the Code of Virginia while enabling the Commonwealth to meet its obligations under the federal Clean Air Act.

Because the state regulations are necessary to conform to Virginia statutory law, the state regulations are exempt from all state public participation requirements under the provisions of § 2.2-4006 A 4 a of the Administrative Process Act. However, an agency claiming an exemption must provide to the Registrar of Regulations (i) a statement citing the specific Virginia Code section referencing the exemption being claimed and (ii) confirmation from the Office of the Attorney General. 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 are recommending be made to the regulation:

1. Modify definition of "Affected motor vehicle" to exclude any vehicle that qualifies as a hybrid motor vehicle if such vehicle obtains a rating from the U.S. Environmental Protection Agency of at least 50 miles per gallon during city fuel economy tests unless identified by the remote sensing requirements of 9VAC5-91-180 as violating the emissions standards for on-road testing.
2. Add a definition for the term "Qualified hybrid motor vehicle" which means a motor vehicle that (i) meets or exceeds all applicable regulatory requirements, (ii) meets or exceeds the applicable federal motor vehicle emissions standards for gasoline-powered passenger cars, and (iii) can draw propulsion energy both from gasoline or diesel fuel and a rechargeable energy storage system.

NO_x Sip Call Budget (Part I of 9VAC5 Chapter 140, Rev. K08) - Request for Board Action:

On October 27, 1998, EPA promulgated a "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for the Purpose of Reducing Regional Transport of Ozone", commonly known as the NO_x SIP Call, 40 CFR Part 96 of the Code of Federal Regulations (CFR). The original rule required 22 states and the District of Columbia to reduce NO_x emissions that cross state boundaries, forming ground-level ozone in downwind states. That initial action was challenged in the U.S. Court of Appeals for the D.C. Circuit. However, in March of 2000 the court reaffirmed the EPA program and the court required SIP submittals for the affected states (including Virginia) and the District of Columbia.

The Board approved Part I of 9VAC5 Chapter 140 (NO_x Budget Trading Program) in February 2002. The program created an enforceable mechanism to meet the requirements of 40 CFR Part 96 and to assure that collectively, all affected sources would not exceed the total NO_x emissions cap established by regulation for the year 2007 ozone season. It also established the regulatory basis for a program under which the creation, trading (buying and selling) and registering of emission credits could occur. The program had a start date of May 31, 2004, and established an initial budget allocation to affected sources for the first five years (through 2008) as required by law.

On May 12, 2005 (70 FR 25162), EPA published the final Clean Air Interstate Rule (CAIR), 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. In essence, this program was intended to replace the seasonal NOx SIP Call as well as create an annual trading program for NOx and SO₂.

The Board approved Parts II, III and IV of 9VAC5 Chapter 140, the Clean Air Interstate Rule, pursuant to provisions in the VA Code § 10.1-1328 in December of 2006. The program established a state program to meet the requirements set forth in the EPA CAIR regulation with start date of January 1, 2009. This was timed to start specifically after the first five years of the NOx SIP Call Program.

On July 11, 2008, a three member panel of the U.S. Court of Appeals for the D.C. Circuit went well beyond the remand of some sections of the rule sought by North Carolina and some electric utilities and vacated the entire EPA CAIR regulation. In the absence of the EPA regulation, VA Code § 10.1-1328 does not provide sufficient support for a state CAIR regulation which is clearly based upon the federal regulations; thus Parts II, III and IV of 9VAC5-140 are not being implemented.

The NOx SIP Call program is still in effect and can be used to help the Commonwealth meet its obligation to reduce the transport of upwind NOx emissions to downwind states. In reviewing the NOx SIP Call regulation it was determined that regulatory language inadvertently ended the state budget in 2008. The language in 9VAC5-140-900 identifies the budget for use in the years 2004 through 2008; however, there is no language to continue the budget past the 2008 date. In the absence of CAIR, the NOx SIP Call program must be amended to extend beyond the 2008 ozone season.

The Department is requesting approval of draft final regulation amendments that meet state and 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 consist only of changes in style or form or corrections of technical errors, the state regulations are exempt from all state public participation requirements under the provisions of § 2.2-4006 A 3 of the Administrative Process Act. However, an agency claiming an exemption must provide to the Registrar of Regulations (i) a statement citing the specific Virginia Code section referencing the exemption being claimed and (ii) confirmation from the Office of the Attorney General. 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.

The Virginia NOx SIP Call budgets are based upon the EPA federal implementation plan regulations found in 40 CFR Part 97, specifically identified in Appendix C.

The major provisions of the proposal are summarized below:

- 9VAC5-140-900 is being amended to extend the state trading budget beyond 2008.
- 9VAC5-140-920 is being amended so that allocations issued to electric generating units extend beyond 2008.
- 9VAC5-140-930 is being amended so that allocations issued to non-electric generating units extend beyond 2008.

Final Amendments to Regulations Concerning the Minor New Source Review Program (9VAC5-80, Rev. J08) - Request for Board Action: Chapter 282, 2008 Acts of the Assembly, requires the board to adopt regulations providing that when determining whether a physical or operational change at an existing stationary source requires a permit or permit amendment under the minor new source

review regulations, any change in emissions shall be calculated as the difference between the source's pre-change and postchange annual uncontrolled emission rates. The new legislation includes a definition for "uncontrolled emission rate."

The new legislation also updates the provisions of §10.1-1322.4 (Permit modifications for alternative fuels or raw materials) relating to alternative fuels and air emissions. The new legislation provides an exception from the requirement to perform trial burns for certain fuels.

The department is requesting approval of draft final regulation amendments that meet state statutory requirements. Approval of the amendments will ensure that the Minor New Source Review Program will be in compliance with the Code of Virginia.

Because the state regulations are necessary to conform to Virginia statutory law, the state regulations are exempt from all state public participation requirements under the provisions of §2.2-4006 A 4 a of the Administrative Process Act. However, an agency claiming an exemption must provide to the Registrar of Regulations (i) a statement citing the specific Virginia Code section referencing the exemption being claimed and (ii) confirmation from the Office of the Attorney General. 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 amendments the department are recommending be made to the regulation.

The provisions related to the applicability test for modifications have been changed from the actual-to-potential emissions test to an uncontrolled-to-uncontrolled emission rate test to comply with Section 2 of the new legislation. This involves (i) deleting the definition of "actual emissions," which contains the actual-to-potential test, and adding a new definition for "uncontrolled emission rate," and (ii) replacement of the text, "actual emissions" with the text, "the uncontrolled emission rate" throughout the regulation.

The provisions related to alternative fuels and air emissions have been updated to be consistent with §10.1-1322.4 and provide an exception from the requirement to perform trial burns for certain fuels. These provisions have also been restructured somewhat to ensure no conflict with federal law or regulation.

Permit Actions Before the Board (9VAC5-80 and 9VAC5-170, Rev. G08) - Request for Board Action: Chapter 276, 2008 Acts of Assembly, created §10.1-1322.01, Permits; procedures for public hearings and permits before the board. It allows for additional opportunity for public comment and board review of permitting actions: (i) during the public comment period on a permit action, interested persons may request a public hearing to contest the action or the permit itself; and (ii) where public hearings are mandatory under state or federal law or regulation, interested persons may request, during the public comment period on the permit action, that the board directly consider the permit action. The new legislation also necessitates changes to the public participation requirements in the permitting regulations of Chapter 80.

The department is requesting approval of draft final regulation amendments that meet state statutory requirements. Approval of the amendments will ensure that the Stationary Source Permit Program will be in compliance with the Code of Virginia.

Because the state regulations are necessary to conform to changes in Virginia statutory law, the state regulations are exempt from all state public participation requirements under the provisions of §2.2-

4006 A 4 a 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 necessary to conform to changes in Virginia statutory law 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.

Part I of 9VAC5-80

The new procedures set forth in §10.1-1322.01 have been placed into Part I of Chapter 80. As mentioned above, the new legislation addresses two issues: (i) where there is only a public comment period prior to the permit decision, and (ii) where there is a federal or state mandate to hold a hearing prior to the permitting decision. Both of these issues are addressed in a single narrative in §10.1-1322.01. In order to ensure clear and consistent implementation, this provision has been split into separate sections: 9VAC5-80-25 and 9VAC5-80-35.

In the air permit program, a public hearing is required by either federal or state regulation for all major and certain minor new source review permits. On the other hand, operating permits have no mandate for a hearing; however, there is the opportunity to request one during the public comment period.

Part II of 9VAC5-80

In each of the articles in Chapter 80 that cover the various permit programs, we have included provisions from the law that tell the public what to do to request a hearing or board consideration, with a cross-reference to the appropriate provisions of Part I. The articles affected are as follows:

- Article 1, Federal Operating Permits for Stationary Sources, has been revised to meet the requirements of §10.1-1322.01, including reference to Part I of 9VAC5-80. [9VAC5-80-150, 9VAC5-80-230, 9VAC5-80-270; page 11]
- Article 3, Federal Operating Permits for Acid Rain Sources. [9VAC5-80-510, 9VAC5-80-590, 9VAC5-80-670; page 16]
- Article 5, State Operating Permits. [9VAC5-80-860, 9VAC5-80-990, 9VAC5-80-1020; page 22]
- Article 6, Permits for New and Modified Stationary Sources. [9VAC5-80-1160, 9VAC5-80-1170, 9VAC5-80-1290; page 26]
- Article 7, Permits for New and Reconstructed Major Sources of Hazardous Air Pollutants. [9VAC5-80-1450, 9VAC5-80-1460; page 30]
- Article 8, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas. [9VAC5-80-1765, 9VAC5-80-1773, 9VAC5-80-1775, 9VAC5-80-1955; page 35]
- Article 9, Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region. [9VAC5-80-2060, 9VAC5-80-2070, 9VAC5-80-2230; page 43]

9VAC5-170

Chapter 170 has been updated to reflect the new legislation and to correct a number of technical errors. [9VAC5-170-30, 9VAC5-170-180, 9VAC5-170-190, 9VAC5-170-200; page 47]

Consumer and Commercial Products (9VAC5-45, Rev. D06) - Regulation Development Report and Request to Publish Proposal for Public Comment: The Clean Air Act mandates that states include in their State Implementation Plans (SIPs) certain control measures. If it is determined that these federally mandated measures will not fill the gap between air quality goals and actual air quality, the SIP must then incorporate additional measures as needed to meet the air quality goals. These additional measures are determined in consultation with locally affected officials, who provide input on control strategy development and associated control measures. In the Northern Virginia area, the pertinent body of locally affected officials is the Metropolitan Washington Air Quality Committee (MWAQC). MWAQC has recommended that Maryland, Virginia, and Washington, D.C., adopt new regulations or amend existing regulations for consumer products in order to achieve the necessary reductions of VOC emissions in the Northern Virginia area. In the Fredericksburg area, the pertinent body of locally affected officials is the George Washington Air Quality Committee (GWAQC). GWAQC has recommended that similar regulations be adopted and amended for the Fredericksburg and Spotsylvania County area.

The Department is requesting approval of a proposal for public comment that meets federal statutory and regulatory requirements. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

To solicit comment from the public on the notice of intended regulatory action, the Department issued a notice that provided for receiving comment during a comment period and at a public meeting.

The notice of intended regulatory action included a statement inviting comment on whether the Department should use an ad hoc advisory group to assist the Department in the development of the proposal. Since the department did not receive written responses from at least five persons during the associated comment period indicating that the department should use an ad hoc advisory group, the department did not use an ad hoc advisory group.

The proposed regulatory action adds a new chapter (9VAC5-45) specifically for regulations pertaining to consumer and commercial products and is applicable to specific product types and the owners that are involved in the manufacture, distribution, retail sales and in some cases, the marketing and use of those products.

In Part I of the new chapter, special provisions specify the general testing, monitoring, compliance, notification, recordkeeping and reporting requirements that are applicable to all articles in the new chapter and specify certain other sections of the regulations that are not generally applicable. Exceptions to the special provisions are addressed in each individual article of the new chapter.

In Part II of the new Chapter 45:

1. The proposed regulatory action establishes standards for Portable Fuel Containers for products manufactured before and after January 1, 2009 as new Articles 1 and 2 in Chapter 45, respectively, and applies to all of the products subject to the current provisions of Chapter 40, Article 42 Portable Fuel Container Spillage. Article 1 clarifies some Article 42 exemptions and definitions, adds another exemption category, removes obsolete standards and their associated administrative requirements, and provides criteria for sell-through of products. Because Article 1 applies to all products manufactured before January 1, 2009 and is designed to replace Chapter 40, Article 42, the compliance schedule proposed for Article 1 is the same as that in Chapter 40, Article 42. Article 2 applies to all portable fuel container products manufactured on or after January 1, 2009 and requires board pre-certification

of new portable fuel container products as compliant with new labeling requirements and with new and more stringent design and performance standards. Article 2 also includes applicability to a new category of owner, and adds (i) new and revised exemptions, (ii) new certification procedures, (iii) new testing standards, and (iv) alternative compliance provisions for innovative products over those provisions now applicable under Chapter 40, Article 42. The new Article 2 specifies a compliance deadline no later than January 1, 2009. Chapter 40, Article 42 will be repealed at an appropriate time after the standards in the new Articles 1 and 2 are effective.

2. The proposed regulatory action establishes standards Consumer Products for products manufactured before and after January 1, 2009 as a new Articles 3 and 4 in Chapter 45, respectively and applies to all of the products subject to the current provisions of Chapter 40, Article 50 Consumer Products. Article 3 pertains to consumer products manufactured before January 1, 2009, clarifies some definitions and standards, makes the Alternative Control Plan procedures more flexible, revises labeling, reporting and other administrative requirements, and clarifies sell-through criteria. Because Article 3 applies to all products manufactured before January 1, 2009 and is designed to replace Chapter 40, Article 50, the compliance schedule proposed for Article 3 is the same as Chapter 40, Article 50. Article 4 applies to all consumer products manufactured after January 1, 2009 and includes all of the changes made in Article 3, adds more definitions and standards for some new product categories and establishes new labeling and other administrative requirements. Article 4 specifies a compliance deadline no later than January 1, 2009. Chapter 40, Article 50 will be repealed at an appropriate time after the standards in the new Articles 3 and 4 are effective.

3. The proposed regulatory action establishes standards for Architectural and Industrial Maintenance Coatings and incorporates all of the provisions of Chapter 40, Article 49 Emission Standards for Architectural and Industrial Maintenance Coatings into a new Article 5 in Chapter 45, except that the new Article 5 removes some obsolete reporting requirements and changes the remaining one to a recordkeeping requirement. Because the standards and other provisions of the new Article 5 are not substantively changed from what is in Chapter 40, Article 49, no new compliance dates are proposed. Chapter 40, Article 49 will be repealed at an appropriate time after the new Article 5 standards are effective.

4. The proposed regulatory action will add a new regulation, Article 6 in the new chapter 45 that establishes new emission standards for Adhesives and Sealants. The provisions of this article apply to owners who sell, supply, offer for sale or manufacture for sale commercial adhesives, sealants, adhesive primers or sealant primers that contain volatile organic compounds within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The provisions will also apply to owners that use, apply for compensation or solicit the use or application of such products in those areas. Exempted from the regulation is any such product manufactured in the Northern Virginia or Fredericksburg VOC Emissions Control Areas for shipment and use outside of these areas. The provisions of this regulation will not apply to a manufacturer or distributor who sells, supplies, or offers for sale such products that do not comply with the VOC standards as long as the manufacturer or distributor can demonstrate both that the product is intended for shipment and use outside of those areas and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the product is not distributed in those areas. A number of product-specific exemptions are also allowed. VOC content limits are specified for different product categories. Control technology guidelines are offered as an alternate means of achieving compliance with the standards. Test methods, registration requirements and recordkeeping procedures are provided. This article specifies a compliance deadline of January 1, 2009.

5. The proposed regulatory action establishes standards for asphalt paving operations and incorporates all of the provisions of Chapter 40, Article 39 Emission Standards for Asphalt Paving Operations as a new Article 7 in Chapter 45. Applicability provisions in Article 7 apply to owners instead of sources

and a new definition of paving operations is added that clarifies the types of operations to which the provisions of the regulation apply. Since the standards and other provisions in this article are not substantively changed, no new compliance date is proposed. Chapter 40, Article 39 will be repealed at an appropriate time after the new Article 7 standards are effective.