

TENTATIVE AGENDA
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, JUNE 4, 2010

DEPARTMENT OF ENVIRONMENTAL QUALITY
629 EAST MAIN STREET
2ND FLOOR TRAINING ROOM
RICHMOND, VIRGINIA

Convene – 9:30 a.m.

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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 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 its 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 during the Notice of Public

Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites 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. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held. 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 commented during the public comment period on the proposal 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 the decision. 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 at the public hearing or during the public comment period up to 3 minutes to exercise their rights to respond to the summary of the prior public comment period 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 commented 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. In the case of 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, the Department may announce an additional public comment period 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 those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

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: cindy.berndt@deq.virginia.gov.

AMBIENT AIR QUALITY STANDARDS (9VAC5-30, REV. A10) - Request for Board Action on Exempt Final Regulation: On February 9, 2010 (75 FR 6474), EPA issued a regulation revising the NAAQS for nitrogen oxides (NO_x) measured as nitrogen dioxide (NO₂). The primary annual ambient air quality standard remains 53 parts per billion (ppb). A new primary 1-hour standard has been added at 100 ppb. The secondary standard remains at 0.053 parts per million (ppm). The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb. The 1-hour primary standard is met when the 3-year average of the annual 98th percentile of the daily maximum 1-hour average concentration is less than or equal to 100 ppb. The secondary

standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm. The new standard became effective on April 12, 2010.

Chapter 30 contains the ambient air quality standards for the specific criteria pollutant standards set out in 40 CFR Part 50. Therefore, this chapter is the action effectively implementing the EPA requirements.

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 the standard regulatory adoption process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by 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 standard regulatory adoption process and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. Further, 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.

Notice that the regulation would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

SUMMARY OF AMENDMENTS TO REGULATION: (1) Appendix S to 40 CFR Part 50 has been added to the federal documents incorporated by reference list. [9VAC5-20-21 E 1 a (1) (s)] and (2) The new standard for NO₂ has been added. [9VAC5-30-70]

CAIR NONATTAINMENT AREA REQUIREMENTS PARTS II, III AND PART IV OF 9VAC5 CHAPTER 140 (Rev. B10) - Request for Board Action on Exempt Final Regulation: The State Air Pollution Control Board adopted final regulations to implement the provisions of the Code of Virginia that address compliance in nonattainment areas for the state Clean Air Interstate Rule (CAIR) program on October 10, 2007. The regulations were adopted under the authority of the Code of Virginia that addressed compliance in nonattainment areas for the state CAIR program, as set forth in the 2006 Acts of Assembly (Chapters 867 and 920). The 2006 legislation (specifically, § 10.1-1328 A 5 of the Code of Virginia) authorized the Board to adopt regulations that shall provide for participation in the EPA-administered cap and trade system for nitrogen oxides (NO_x) and sulfur dioxide (SO₂) to the fullest extent permitted by federal law except that the Board may prohibit electric generating facilities located within a nonattainment area in the Commonwealth from meeting their NO_x and SO₂ compliance obligations through the purchase of allowances from in-state or out-of-state facilities.

The final regulations added two new sections to each of the parts of 9VAC5 Chapter 140 that make up the state CAIR program as follows:

Part II of 9VAC5 Chapter 140 (NO_x Annual Trading Program)

9VAC5-140-1061. Nonattainment area requirements.

9VAC5-140-1062. NO_x emissions compliance demonstration.

Part III of 9VAC5 Chapter 140 (NO_x Ozone Season Trading Program)

9VAC5-140-2061. Nonattainment area requirements.

9VAC5-140-2062. NO_x emissions compliance demonstration.

Part IV of 9VAC5 Chapter 140 (SO₂ Annual Trading Program)

9VAC5-140-3061. Nonattainment area requirements.

9VAC5-140-3062. SO₂ emissions compliance demonstration.

The regulations were published in the Virginia Register on November 26, 2007. A petition was filed; the effective date of the regulations was suspended, and litigation over the provisions continued through 2008 and 2009. On February 25, 2010, a final decision of the Court of Appeals of Virginia remanded the regulation and vacated the nonattainment provisions in both the NO_x Annual Trading Program (Part II of 9VAC5-140-1061) and the NO_x Ozone Season Trading Program (Part III of 9VAC5-140-2061). These provisions must now therefore be repealed from the regulations of the board.

Senate Bill 128 and House Bill 1300 of the 2010 Acts of the Assembly amended §10.1-1328 A 5 of the Code of Virginia which states:

5. The regulation shall provide for participation in the EPA-administered cap and trade system for NO_x and SO₂ to the fullest extent permitted by federal law except that the Board may prohibit electric generating facilities located within a nonattainment area in the Commonwealth from meeting their NO_x and SO₂ compliance obligations through the purchase of allowances from in-state or out-of-state facilities.

The amended language deletes the following phrase: "*except that the Board may prohibit electric generating facilities located within a nonattainment area in the Commonwealth from meeting their NO_x and SO₂ compliance obligations through the purchase of allowances from in-state or out-of-state facilities.*"

Therefore, the nonattainment provisions of 9VAC5-140-3061 of Article 5 (CAIR SO₂ Allowance Allocations) of the SO₂ Annual Trading Program are not consistent with the Code of Virginia and must also be repealed. The compliance demonstration provisions for all three trading programs (9VAC5-140-1062, 9VAC5-140-2062 and 9VAC5-140-3062) are also being repealed as they are no longer necessary.

The department is requesting approval of draft final regulation amendments that meet the requirements of a court order and the Code of Virginia. Approval of the amendments will ensure that the Board's regulations are consistent with the court order and state law.

Because the state regulations are necessary to conform to Virginia statutory law and are necessary to conform to an order of the court the state regulations are exempt from the standard regulatory process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 a and § 2.2-4006 A 4 b 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.

Summary Of Amendments To Regulation: (1)Delete 9VAC5-140-1061 and 9VAC5-140-1062 (9VAC5-140, Part II - NO_x Annual Trading Program); (2) Delete 9VAC5-140-2061 and 9VAC5-140-2062 (9VAC5-140, Part III - NO_x Ozone Season Trading Program); and (3) Delete 9VAC5-140-3061, and 9VAC5-140-3062 (9VAC5-140, Part IV - SO₂ Annual Trading Program)

PARTICULATES IN RODA:

Status Report:

DMLR complaints since MOA							
Complaint No.	Complainant	Received	Location	DMLR Investigated	Company	Permit	DEQ Air copied
0900130	Anonymous	12/11/09	Dwale/Dic. Co	12/11/09	Paramont Coal Co. Va. LLC	1202020	1/5/10
0900131	Tony Sullivan	12/14/09	Race Fork/Buch. Co	12/14/09	Clintwood Elkhorn Mining Co.	1101795	1/5/10
0900132	Larry Lambert	12/15/09	SR 603, nearAppalachia	12/15/09	Ambrose Branch Coal Co., Inc.	1501947	2/10/10

1000002	Robert Mullins	01/06/10	Andover	01/06/10	Hill Coal Co.		1/13/10
1000006	Larry Bush	01/19/10	Exeter	01/19/10	Sigmon Coal Co./ A & G Coal & others	1102028	1/22/10
1000007	Arlene & Jonah Gorman	01/21/10	Lick Fork/Dic. Co.	01/21/10	Paramont Coal Co. Va. LLC	1201856	1/25/10
1000003	Gary Bowman	01/22/10	Andover	01/22/10			2/9/10
1000008	Billy Thomas	01/25/10	Exeter	01/25/10	Sigmon Coal Co.	1601744	2/3/10
1000010	Gerald Garrett	01/25/10	Keokee/Exeter	01/25/10	Sigmon Coal Co.	1601744	1/29/10
1000027	Larry Bush	02/16/10	Exeter	02/16/10	Sigmon Coal Co./ A & G Coal & others	1601744 +	3/19/10
1000028	Anonymous	02/18/10	near Haysi	02/18/10	Dickenson-Russell Coal Co., LLC	1201837	3/1/10
1000030	Anonymous	02/22/10	Cane Branch/Dic. Co.	02/22/10	Baden Reclamation Co., Inc.	1101953	2/23/10
1000031	Kathy Johnson	02/22/10	between Appalacia & Elem. Sch.	02/22/10	Airway Resources LLC	1301742	2/26/10
1000032	Larry Bush	02/22/10	Exeter	02/22/10	Sigmon Coal Co.	1601744	3/16/10
1000035	Tammy Dotson	02/22/10	Mill Creek/Dic. Co.	02/22/10	Barnette Energy LLC	1101978	3/1/10
1000033	Anonymous	02/23/10	Exeter	02/23/10	Sigmon Coal Co.	1601744	3/1/10
1000034	Tom Arnett	02/23/10	Exeter	02/23/10	Sigmon Coal Co./ A & G Coal & others	1601744 +	3/15/10
1000036	Kim Mabe via DEQ	02/11/10	Stonega	02/11/10	Pigeon Creek Processing Corp.	1501773	2/11/10
1000039	Pat Hughes	02/24/10	Home Creek/Buch Co.	02/25/10	The Black Diamond Co.	1601816	2/25/10
1000041	Anonymous	03/01/10	Wiser Valley Rd/Rus Co.	03/01/10	Harold Keene Coal Co., Inc.	1300823	3/3/10
1000043	Larry Bush	03/03/10	Exeter	03/03/10	Sigmon Coal Co./ A & G Coal & others	1601744 +	3/15/10
1000057	Arlene & Jonah Gorman	03/03/10	Lick Fork/Dic. Co.	03/04/10	Paramont Coal Co. Va. LLC	1201856	3/19/10
1000044	Elmer Johnson	03/04/10	Exeter	03/04/10	Sigmon Coal Co./ A & G Coal & others	1601744 +	3/15/10
1000045	Tony & Sherry Sullivan	03/04/10	Race Fork/Buch. Co	03/04/10	Clintwood Elkhorn Mining Co.	1301714	3/8/10
1000046	Robert Hankins	03/04/10	Big Rock/Buch Co.	03/04/10	The Black Diamond Co.	1400345	3/8/10
1000056	Loma Lawson	03/04/10	Exeter	03/04/10	Sigmon Coal Co.	1601744	3/15/10
1000047	Richard & Jackie Mullins	03/05/10	Exeter	03/05/10	Sigmon Coal Co.	1601744	3/15/10
1000048	Jerry Belcher	03/08/10	Exeter	03/08/10	Sigmon Coal Co.	1601744	3/15/10
1000049	Brandy Belcher	03/08/10	Exeter	03/08/10	Sigmon Coal Co.	1601744	3/15/10
1000051	Anonymous	03/09/10	Tickey George Hollow/Dic. Co.	03/09/10	Baden Reclamation Co., Inc.	1101953	3/22/10
1000052	Gary Bowman	03/09/10	Andover	03/10/10			3/12/10

1000053	Rick Horne	03/11/10	Shorts Gap/Buch Co.	03/11/10	Knox Creek Coal Corp.	1401598	3/15/10
1000054	Anna Sparks	03/11/10	Shorts Gap/Buch Co.	03/11/10	Knox Creek Coal Corp.	1401598	3/15/10
1000059	Jimmy Hobbs	03/12/10	Exeter, Lick Branch Road		Sigmon Coal Co.	1201680	
1000063	Tony & Sherry Sullivan	03/19/10	Race Fork/Buch. Co	03/19/10	Clintwood Elkhorn Mining Co.	1301714	4/30/10
1000071	Anonymous	03/31/10	State Route 624	03/31/10	Harold Keene Coal Company, Inc.	1401963	4/9/10
1000073	Anonymous	04/05/10	State Route 704 - intersects with State Route 624	04/05/10	Harold Keene Coal Company, Inc.	1401963	4/9/10
1000080	Mitchell Chester	04/07/10	9140 Clintwood Road	04/08/10	Paramont Coal Company Virginia LLC	1101849	4/22/10
1000082	Call placed to Fred Luntsford (Town of Appalachia)	04/20/10	Hills Fuel Co. - Andover Community	04/20/10	Hill Fuel Co.	1302035	4/27/10
1000092	Jimmy Horn	04/30/10	Knox Creek Coal Corp. - State Route 629	05/03/10	Knox Creek Coal Corp.	1401598	5/6/10
blue - referred to DMLR		red - DMLR to DEQ		green - has a DEQ permit		yellow - action taken	

DEQ COMPLAINTS SINCE MOA

IR #	Complainant	Received	Location	DEQ Investigated	Company	Permit	DE
2010-S-1923	Robert Mullins	1/14/10 DMLR investigated 1/06/10	Andover	01/14/10	Hill Coal Co.	10766	RC
2010-S-2020	Gary Bowman	01/21/10	Andover	1/22/10 & 1/28/10	dust on road	N/A	no pro
2010-S-3504	Anonymous	03/11/10	Exeter	03/11/10	dust from coal truck traffic and strip mining	N/A	No p on 3/ also i 3/08/
2010-S-2800	Tim Bailey	4/7/10 Mr. Bailey said the dust was on 4/05/10	Cleveland	04/07/10	dust from prep plant operations	10235	no pro

2010-S-2839	Tim Bailey	4/7/10 Mr. Bailey said the dust was on 4/06/10	Cleveland	04/07/10	dust from prep plant operations	10235	no pro
2010-S-2836	Tim Bailey	04/07/10	Cleveland	04/07/10	dust from prep plant operations	10235	no pro
2010-S-2838	Jerry Smith	04/07/10	Cleveland	04/07/10	dust from prep plant operations	10235	no pro
	Tim Bailey	5/10/10 Mr. Bailey said the dust was on 5/07/10	Cleveland	5/7/10 & 5/11/10	dust from prep plant operations	10235	no pro
red - referred from DMME		yellow - action taken					

Report from Chair On Board Options for Roda:

1. Request the Department to issue a fugitive dust permit for Roda operators.
2. Institute an enforcement proceeding against Roda operators for violation of fugitive dust regulations pursuant to §10.1-1307 D and §10.1-1309.
3. Institute a proceeding under §10.1-1307 D and §10.1-1309 to determine if it is necessary to diminish and abate fugitive dust at Roda and, if so, to require the submission of plans to the Board by Roda operators to diminish and abate the causes of fugitive dust air pollution.
4. Amend and grant the Southern Appalachian Mountain Stewards and Sierra Club petition to revise the Fugitive Dust Regulations by (a) adding in 9 VAC 5-40-90 and 9 VAC 5-50-90, in addition to the amendments in the petition, as item 9 a provision that would require, where necessary, the sweeping, washing, and wetting of roads where the dust is caused by the release of the material being carried or the vehicles carrying the material, and (b) adding new sections 9 VAC 5-40-130 and 9 VAC 5-50-130 that would authorize the Board to require any coal mine, coal handling, or coal transportation facility to obtain a fugitive dust permit if the Board determines that such permit is necessary to remedy a condition that may cause or contribute to the endangerment of human health or welfare.

PETITION FOR RULEMAKING CONCERNING FUGITIVE DUST (9VAC5 CHAPTERS 40 AND 50): On November 20, 2009, the board received a petition from Southern Appalachia Mountain Stewards and the Sierra Club to initiate a rulemaking concerning fugitive dust regulations. As required by law, notice of the opportunity to submit written comments was given to the public on December 21, 2009 in the Virginia Register and the public comment period closed on February 10, 2010; 179 comments were received. The nature of the request is summarized below followed by an analysis of the public testimony, along with the basis for the decision of the board.

The petitioners are requesting the board to amend the fugitive dust emissions standards for existing and new and modified stationary sources. The petitioners have requested that additional language be added to the fugitive dust standards to clarify what is meant by "reasonable precautions," to provide additional examples of reasonable precautions specific to the type of activities that contributed to a documented dust problem in Roda, Virginia. Further, the petitioners state that the proposed amendments would strengthen and clarify the fugitive dust standard without imposing significant burdens on regulators or on the facilities subject to the regulations.

Below is a summary of each person's comment and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The board has reviewed the comments and

developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the air quality program and the applicable statutory provisions governing the program.

1. **SUBJECT:** Actions taken to address fugitive dust concerns.

COMMENTER: Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (DMME/DMLR)

TEXT: The petition was submitted to address fugitive dust concerns the petitioners attribute to coal haulage activities in the Roda community, near Appalachia, Virginia of Wise County. DMME is the state agency that regulates land-disturbing, mining, and reclamation activities from coal mining operations under Chapter 19 of Title 45.1 of the Code of Virginia and the regulations promulgated thereunder (4VAC25-130-700 et seq.). In addition to the regulatory requirements under the Virginia Coal Surface Mining Reclamation Regulations, DMME has published Guidance Memorandum No. 29-09 to address additional measures that may be employed to address fugitive dust problems in the coal producing communities. DMME has worked with DEQ, the Virginia Department of Transportation, the Virginia State Police, permitted coal mine operators, and concerned citizens to address fugitive dust concerns. DMME and DEQ entered into a Memorandum of Agreement (MOA) on December 9, 2009, to coordinate their efforts to facilitate efficient and effective administration of applicable state and federal environmental laws, regulations, and policies for fugitive dust control on and immediately adjacent to active coal mining sites.

RESPONSE: DMME's efforts to coordinate fugitive dust control activities with DEQ and other agencies and individuals are recognized and appreciated.

2. **SUBJECT:** Requirements and applicability.

COMMENTER: DMME/DMLR

TEXT: The proposed amendments to 9VAC5-40-90 and 9VAC5-50-90 are duplicative of the regulatory requirements that already exist under the Virginia Coal Surface Mining Reclamation Regulations and the recommendations of DMME Guidance Memorandum No. 29-09. DMME requires each permit applicant to address how it will comply with the Clean Air and Clean Water Acts (4VAC25-130-780.18(b)(9 and 10), and 4VAC25-130-784.13(b)(9 and 10), Reclamation plan; general requirements) in the detailed permit application. DMME may require additional corrective measures if a site situation requires such to protect the environment and the health and safety of the public. The proposed amendments would impose, contrary to the petitioners' claim, a substantial and significant financial burden upon the Commonwealth to conduct duplicative enforcement activities.

While the proposed amendments were crafted to specifically address fugitive dust concerns attributed to coal mining activities, they will in fact be applicable to any activity that may result in fugitive dust concerns across the Commonwealth – logging, gas/oil well/pipeline operations, quarry operations, other mining activities, road construction, development projects, farming operations, etc. DMME also requires mineral mining and gas and oil permittees to meet statutory and regulatory requirements for environmental protection, including fugitive dust. The proposed requirements would duplicate these similar to duplicating requirements on coal mines.

RESPONSE: We agree that existing regulations and guidance already address the petitioners' concerns. DMME's fugitive dust regulations and guidance are specific to the mining industry. They are designed to afford affected sources the flexibility needed to address the needs of a particular mining operation at an individual site. In contrast, the air quality regulations are more general. They are designed to address a wide range of potential fugitive dust issues for various industries throughout the Commonwealth. Working cooperatively, both sets of regulations provide adequate controls of fugitive dust. Nothing in either set of regulations prevents a mining source from implementing any of the petitioners' suggestions; indeed, there may be numerous other potential controls not considered in the petition that might better address a particular fugitive dust situation. Revising the air quality regulations to adopt the petitioners' recommendations would, therefore, be unnecessary and inappropriate for the regulations' purpose.

Note that the suggested revisions could potentially engender unintended problems. For example, the installation of washing and watering systems may require permits under National Pollutant Discharge Elimination System (NPDES) authority. In other words, the solution to an air quality problem should not lead to potential water and waste management problems.

In addition to the financial burden associated with duplicative enforcement activities, there would also be significant costs associated with developing an unnecessary regulation. Full-process regulatory development is expensive and time-consuming, involving hundreds of hours of staff time, and thousands of dollars of services and supplies. It would also divert staff from complex major programs mandated by federal and state law.

As discussed in the response to comment 1, we are pleased to be able to continue our cooperative relationship with DMME as well as other affected parties in protecting public health and welfare.

3. **SUBJECT:** Permits.

COMMENTER: DMME/DMLR

TEXT: The standards that may be applied should reflect the actual site conditions and proximity of the public who may be affected. This is effectively achieved through establishment of site-specific conditions under DMME permits.

RESPONSE: We agree that the establishment of site-specific conditions in a legally enforceable permit is the best means of achieving and maintaining compliance with fugitive dust control requirements.

4. **SUBJECT:** Statewide regulations for local issues.

COMMENTER: Roger Jones, Big Stone Gap, Virginia; Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: Statewide rulemaking is not appropriate for any alleged local residential community dust problems.

Construction, timbering, and other industries including coal hauling in local residential areas change periodically and at times are intrusive or a significant change to ordinary traffic patterns and significantly different to what the local community is used to; therefore complaints can occur whether warranted or not and state regulations are currently in place to sufficiently handle those situations when warranted. Many times the only access roads available for hauling coal or other commodities is via public roads; truck routes are not always feasible. The term "reasonable precautions" and list are best left open as can include but not all inclusive. The existing dust regulations are sufficient for allowing local solutions to specific problems, if and as problems occur.

To specifically list in a statewide regulation examples of reasonable precautions that are "reasonable" and applicable in every case ignores the simple reality that there will always be differences in each situation which may make such precautions unreasonable at a particular time or location.

RESPONSE: As discussed in the response to comment 2, fugitive dust is a source-specific and locality-specific issue that needs to be addressed in a general manner that will function statewide. The commenter correctly asserts that the list of "reasonable precautions" is a general list of options, to be considered on a case-by-case basis, for those seeking approaches for controlling fugitive dust. Specific approaches that may be best utilized for a specific industry under specific operating conditions in a particular area of the state may not be appropriate for all industries in different areas of the state. Sources should have as much flexibility as possible in developing fugitive dust controls, and not be limited--or perceived to be limited--to a very particular menu of options, whether appropriate or not.

5. **SUBJECT:** Use of regulations.

COMMENTER: Roger Jones, Big Stone Gap, Virginia

TEXT: When and where do more and more regulations that some entity wants along with even more strict enforcement and normally punitive fines stop? Do the lawyers then sue DEQ to make more money for themselves? It often seems so. More regulations and mandates will never exceed cooperation with the local community.

RESPONSE: We agree that community involvement is an essential element in addressing local fugitive dust problems.

6. **SUBJECT:** Resolution of complaints.

COMMENTER: Roger Jones, Big Stone Gap, Virginia

TEXT: Data from DEQ's own tests do not warrant additional regulations. If the dust complaints have subsided from actions taken, then why implement mandatory additional regulations. More regulations could prove unworkable and costly to entities that do not seem to have the same dust problems in their respective work areas as those alleged complaints in the petition. But petitions also allow entities to garner additional members and dues no doubt.

RESPONSE: As evinced by the experience in Roda, the current air regulation operated properly in that it allowed the source to work closely with DEQ and other parties to resolve the fugitive dust situation. The current DMME and DEQ regulations and guidance are demonstrated to address such situations effectively.

7. **SUBJECT:** DMLR regulatory process.

COMMENTER: Roger Jones, Big Stone Gap, Virginia

TEXT: If any additional requirements are still to be imposed, then it should be through the Division of Mined Land Reclamation (DMLR) regulatory process.

RESPONSE: As discussed in the response to comment 2, DMME's fugitive dust regulations and guidance are specific to the mining industry. Mining-specific fugitive dust situations are best addressed in the DMME permit through the establishment of site-specific conditions. In accordance with § 45.1-161.6 of the Virginia Code, DMME is the lead agency with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation.

8. **SUBJECT:** Necessity of proposed regulations in view of DMME regulations.

COMMENTER: Cumberland Resources Corporation

TEXT: Because DMME has agreed to regulate fugitive dust at mine sites, the proposed regulations are unnecessary.

As a result of discussions with DEQ staff, DMME has announced that it will regulate its permittees in regard to fugitive dust both on and off permit sites. A memorandum to this effect was recently released to operators and presented to the board at its November 2009 meeting. The petitioners argue that DMME can only regulate fugitive dust "resulting from erosion." For this reason, the petitioners contend that DMME cannot regulate fugitive dust at mine sites. This contention is erroneous. All materials present at a mine site, including the extracted minerals temporarily stockpiled for subsequent transport, soils and sediments from disturbed areas and surfacing materials (such as crushed stone), are exposed to the atmosphere and thus acted upon by the forces of wind and water erosion. Erosional forces work to break down larger particles into increasingly smaller particles. Once the particles are small

and dry enough to become airborne, they are characterized as "dust." Therefore, the resulting "dust," which may ultimately become "fugitive dust," has in fact "resulted from erosion" and can be regulated by DMME. Additionally, both the Surface Mining Control and Reclamation Act (SMCRA) and its Virginia counterpart specifically require the mining agencies to "insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property. . . ." (See § 515(b)(17) of SMCRA (30 V.S.C. § 1265(b)(17)) and Va. Code § 45.1-212A). In its Guidance Memorandum of November 1, 2009, DMME cites 4 VAC §§ 25-130-816.150(c) and 25-130-817.150(c) in support of its authority to regulate fugitive dust. These regulations specifically authorize DMME to establish "any necessary design criteria" for haulroads.

In *Natural Resources Defense Council, Inc. v. EPA*, 937 F.2d 641, 649 (D.C. Cir. 1991), the Court of Appeals found that SMCRA provides ample authority for regulation of fugitive dust associated with haulroads. In their filing, petitioners do not discuss this case or the haulroad regulations under SMCRA and the Virginia Surface Mining Act. Finally, DEQ is not currently staffed to enforce fugitive dust regulations at mine sites. DMME is already staffed, equipped, and familiar with the facilities and areas of interest. It makes no sense to spend additional taxpayer money to enable DEQ to do a job that DMME is already capable of doing.

RESPONSE: As discussed in the response to comment 2, DMME's fugitive dust regulations and guidance are specific to the mining industry. Mining-specific fugitive dust situations are best addressed in the DMME permit through the establishment of site-specific conditions. As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation.

9. **SUBJECT:** Stringency of proposed provisions.

COMMENTER: Cumberland Resources Corporation; Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: Under Va. Code § 13.1-1308 A, any proposed regulations that are more restrictive than the corresponding federal regulations must be referred to the General Assembly. The petitioners argue that this provision is not applicable "because the Clean Air Act already places restrictions on the release of particulate matter." While EPA regulates some releases of particulate matter, it does not regulate all releases. In fact, EPA recently declined to regulate the release of fugitive dust from roads at coal preparation plants. (See Standards of Performance for Coal Preparation and Processing Plants; Final Rule, 74 FR 51950-51985, October 8, 2009.) In declining to issue these regulations, EPA noted that SMCRA already regulates emissions associated with roads from mines and plants at mines.

In response to EPA's decision, the Sierra Club has initiated proceedings to compel EPA to regulate fugitive dust from roads at coal preparation plants. Specifically, the Sierra Club has filed a petition for reconsideration with EPA and a petition for review with the Court of Appeals for the District of Columbia Circuit. The Sierra Club contends that EPA acted arbitrarily and capriciously in not requiring control measures such as "paving, sweeping excess coal dust, wetting of the road surface, or tire washes." (See Standards of Performance for Coal Preparation and Processing Plants; Proposed Rule, 74 FR 25304, 25313, 25323, May 27, 2009, which lists possible control measures that were not adopted in the final rule.)

So, the Sierra Club is telling EPA and the Court of Appeals that EPA must adopt regulations like the ones proposed to the board, and, at the same time, it is telling the board that equally restrictive federal regulations are already in place. The truth is, the regulations being proposed to the board are more restrictive than any existing EPA regulations, and, therefore, the proposed regulations must go to the General Assembly.

RESPONSE: At this point in the process, there is no proposed regulation in any form that could potentially meet the criteria in § 13.1-1308 A. That issue would have to be addressed should a formal proposal be developed.

10. **SUBJECT:** Statewide rulemaking to address local issues.

COMMENTER: Cumberland Resources Corporation

TEXT: A proposal for statewide rulemaking is not the proper forum to address alleged problems at a specific location. The petition states, "the fugitive dust standard should provide additional examples of reasonable precautions specific to the type of activities that contributed to the documented dust problem in Roda." The proposed rulemaking, if adopted, would apply to all industries statewide. It would be shortsighted to write new regulations with such sweeping implications based on one set of local conditions. If additional regulations are warranted, then research needs to be performed to better define what "reasonable precautions" would mean under a wide range of geographic and topographic settings.

RESPONSE: As discussed in the response to 2, regulatory provisions relevant to a specific industry type in a particular locality are not appropriate in a regulation intended to control a wide range of industries located throughout the entire state. Note that no proposed rulemaking yet exists; the purpose of the petition process is to determine whether the rulemaking process should be undertaken at all.

11. **SUBJECT:** Violation of applicable air quality standards.

COMMENTER: Cumberland Resources Corporation, Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: The proposal is based on a faulty presumption that the existing conditions rise to the level of a violation of applicable air quality standards. The petition refers to a "documented dust problem" in Roda. Our analysis, based on months of scientific data collection, as well as that of DEQ staff, has shown that applicable fugitive dust standards are not being violated at Roda. In this connection, we adopt and incorporate by reference the reports submitted by Cumberland and DEQ staff at the meetings last year. There is no "documented dust problem" at Roda that necessitates additional regulation by the board.

Even if there had been a documented dust problem in Roda, it would be unwise to impose costly regulations of statewide applicability based on an isolated situation that arose during the driest part of the year on an unusual road.

RESPONSE: Air quality monitoring by DEQ in the Roda community indicated one potential exceedance of the national ambient air quality standard (NAAQS) for particulate matter less than 10 microns (PM₁₀). This occurred at a location that did not meet EPA siting criteria for a PM₁₀ monitor, and the monitor was not installed in a manner that would prevent potential operational problems such as particulate re-entrainment. In addition, several activities were occurring during the study in the area of the monitor that could bias the results; a home was burnt down as a means of land clearing and a trash burn barrel was used in close proximity to the monitor. No other potential violations of the PM₁₀ NAAQS were noted by monitoring conducted by DEQ or Cumberland Resources Corporation. The proper approach for addressing fugitive dust issues is to work closely with the source and the community to look for solutions to solve immediate problems with the understanding that as conditions change, solutions may differ. This was the case with the specific situation in Roda, in which the fugitive dust issue was addressed without the creation of new regulations.

12. **SUBJECT:** Reasonable precautions.

COMMENTER: Cumberland Resources Corporation

TEXT: The proposed additional "reasonable precautions" are not universally applicable and present numerous technical problems.

Flexibility is a key component of a successful fugitive dust management program because conditions change from site to site and from day to day. The proposed regulations do not provide for flexibility. For example, proposed item #6 requires "the use *of water* to wash the wheels, undercarriage and *other parts* of every vehicle that hauls coal or other materials before or *immediately after* the vehicle leaves a dusty, dirty or muddy surface." (Emphasis added.) What "other parts" should be washed? The proposed regulation provides no answer. Also, the use of truck washes and other water-based dust abatement measures are necessarily limited to periods when the temperature is above freezing. There is no allowance for this in the proposed regulations. It is especially noteworthy that while the petitioners propose to modify what is "reasonable" by including consideration of proximity to homes and atmospheric conditions that might affect movement of particulate matter, there is no provision in their proposal for consideration of conditions that affect the "reasonableness" of their proposed measures as applied to specific conditions. The proposed regulations illustrate a basic lack of understanding of the issues.

Another example of this lack of understanding is the proposal to require trucks to be washed "immediately after" leaving a dusty, dirty or muddy surface. This requirement presents serious operational problems. For example, this company washes trucks hauling from several different mine sites at two central washing stations. While located between the mine sites and the public roads, these wash stations are not washing the trucks "immediately after" leaving a dusty, dirty or muddy surface. Our current arrangement is working well, as attested to by the petitioners themselves, so why propose this wording? We can only conclude that this is either (a) another example of petitioners lack of understanding in regard to these issues or (b) an attempt to force installation of expensive truck washing facilities at every individual mine site, even if such sites are served by common roads, which favor the concept of a centralized washing facility.

Another example is proposed requirement for rumble strips or speed bumps "before vehicles enter the public road." While these measures may help remove material from the trucks, the resulting impacts produce a lot of noise. If occupied dwellings are nearby, this noise may be a source of irritation for residents, as we often haul at night.

RESPONSE: As discussed elsewhere, potential measures designed to control fugitive dust for air quality purposes need to be broad. Sources must work closely with DEQ and DMME in order to evaluate the best controls needed for their individual situation; sources also need to be flexible in adjusting their plans should a particular measure not be effective or create a different problem. Therefore, a broadly worded regulation that allows operational flexibility for both the department and the regulated community is essential.

13. **SUBJECT:** Flexibility and economic issues.

COMMENTER: Cumberland Resources Corporation

TEXT: The examples provided in these comments illustrate how a "one size fits all" approach as proposed by the petitioners is not practical for fugitive dust. The existing regulatory requirements provide a strong foundation for

protection of the public while maintaining the needed flexibility to address complex and variable conditions in the field.

There are numerous other arguments which could be made against this proposal, including the negative economic impacts on all industries capable of producing fugitive dust (not just the coal industry). Ironically, the proposed regulations would punish the very operators, such as this company, who have initiated sweeping voluntary initiatives to control fugitive dust in and around the communities where they work. In this regard, not only are the proposed regulations impractical and unnecessary, they are patently unfair as well.

RESPONSE: As discussed elsewhere, the regulations need to be flexible enough to enable sources to deal with fugitive dust issues as expeditiously and appropriately as possible.

14. **SUBJECT:** General coal industry position.

COMMENTER: Alpha Natural Resources

TEXT: The petitioners have proposed the amendments to address an issue that is specific to coal mining operations in Roda, Virginia. Alpha does not presently conduct coal mining operations in or near Roda. But, if approved, the proposed amendments would apply to Alpha's business, as well as other innumerable and unknown businesses throughout the Commonwealth. Our hope is that the coal industry can continue to achieve a solution to the fugitive dust issue by working with the appropriate state agency and residents in the affected communities. That approach will generate better and more specifically-tailored solutions for the issue at hand than the drastic approach of rulemaking. Alpha has voluntarily initiated fugitive dust controls at its Moss 3 preparation Plant which include additional paving of entrances, a vacuum street sweeper, a truck tire wash, a dust suppression system at the truck scales, and many other similar controls.

RESPONSE: As discussed elsewhere, sources must work closely with the appropriate state agencies and other parties to resolve fugitive dust issues in a manner appropriate to the source and the locality.

15. **SUBJECT:** Success of voluntary measures.

COMMENTER: Alpha Natural Resources; Virginia Independent Power Producers

TEXT: As stated in the petition, voluntary actions by coal mine operators to reduce fugitive dust have been highly successful. The petition outlines the fugitive dust issues in Roda, citing a study by Dr. Viney P. Aneja ("Characterization of Particulate Matter (PM₁₀) in Roda, Virginia," Department of Marine, Earth, and Atmospheric Sciences, North Carolina State University, Raleigh, North Carolina), which claims that levels of particulate matter in Roda were "up to three times the national standard for [PM₁₀]." Roda Road is traveled by coal haul trucks that service coal mines (none of which are Alpha's). According to the petitioners, elevated levels of PM₁₀ are caused by these haul trucks. The petition also states that, following Dr. Aneja's presentation to the board, coal mine operators in Roda "took significant additional steps to reduce the release of fugitive dust from coal trucks in Roda and nearby communities." These steps, which DEQ recognized were reasonable in a January 4, 2010 letter to DMME, included operating water trucks, and sweepers, paving internal road surfaces, and installing truck washing systems.

If the results of the Aneja study were accurate, the steps taken by Roda's coal mine operators resolved the issue.

According to the petition, the results of air monitoring studies conducted by DEQ showed dramatic improvement.

This improvement was verified in DEQ's January 4 letter, which stated, "We believe the controls put in place in the Roda community have shown positive results and we are pleased that the community has confirmed improvements in situations related to fugitive dust."

The result of the DEQ monitoring study demonstrate that those involved in the day-to-day operations at coal mines best understand the fugitive dust issue and are best positioned to take remedial action. The results also show that the most effective response to the issue must be determined on a case-by-case, mine-by-mine basis. The proposed amendments create a strong presumption in favor of the reasonableness of the enumerated precautions. In turn, they may have the unintended effect of reducing the use of more effective fugitive dust controls in favor of the specifically enumerated precautions. Indeed, in the January 4 letter, DEQ acknowledged that a flexible approach is necessary to control fugitive dust:

DEQ understands that what might constitute reasonable measures to control fugitive dust at a certain facility at one point in time might not be considered to be reasonable at a different facility or at the same facility at a different time under a different set of circumstances.

The prudent course of action is to continue to allow the specific coal mine operators in Roda to tackle the fugitive dust issue. Their response following Dr. Aneja's presentation indicates the industry's willingness to cooperate. The solutions initiated by the coal mine operators are more effective than the proposed amendments could be.

RESPONSE: As discussed elsewhere, the regulations need to be flexible enough to enable sources to deal with fugitive dust issues as expeditiously and appropriately as possible.

16. **SUBJECT:** DMME authority.

COMMENTER: Alpha Natural Resources

TEXT: Although the petitioners acknowledge the effectiveness of the actions taken by mine operators, they remain concerned about the fact that these actions were voluntary. If promulgated, the proposed amendments would be enforced by DEQ. The petitioners are incorrect in stating that DMME has only limited authority to tackle the issue of fugitive dust

caused by coal haul trucks. They complain that DMME can only regulate fugitive dust that is "attendant to erosion." However, the conditions that petitioners seek to address through the proposed amendments are already within the scope of DMME enforcement. Dust from erosion as well as dust generated from stockpiled coal and soil, internal roads, crushing and processing operations, or other related activities is currently regulated by DMME.

DMME is the agency vested with the authority to regulate fugitive dust from coal trucks and is in the best position to do so. Indeed, DMME recognizes this authority and has elected to regulate coal haul truck fugitive dust as set forth in the DEQ/DMME MOA. DMME's authority to regulate fugitive dust attendant to erosion and other mining activities cannot now be further delegated to DEQ because the petitioners would prefer DEQ rather than DMME as the enforcement agency.

RESPONSE: As discussed elsewhere, the air quality regulations, which are general in nature, need to be flexible enough to enable a variety of sources to deal with fugitive dust issues as expeditiously and appropriately as possible throughout the state. As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation. Note that adding certain measures to the list of reasonable measures does not automatically make those specific measures legally enforceable, nor does it make implementation of voluntary measures permanent. As discussed elsewhere, the list is a general list of options to be considered on a case-by-case basis and is not intended to limit approaches to fugitive dust control.

17. **SUBJECT:** Statewide rulemaking to address a local issue.

COMMENTER: Alpha Natural Resources

TEXT: The proposed amendments are a drastic step to correct this isolated issue. When presented with the results of the Aneja study, coal mine operators near Roda acted quickly and efficiently to remediate the elevated levels of PM₁₀. Their response was effective. The flexibility and efficiency with which the coal mine operators were able to respond was an integral part of the solution. The proposed amendments would undermine this flexibility and efficiency, and would create presumptions of reasonableness for certain actions that, although reasonable, may not be the best course of action for every situation.

Coal mine operators and DMME should be given the opportunity to continue to address the issue. Amending statewide stationary source regulations should be a last step rather than a first step. The proposed amendments would have a far-reaching effect, well beyond the coal industry and Roda. Such action should be taken deliberately, and only when necessary. If promulgated, the amendments would apply statewide to all trucking and haul operations on public roads attendant to each and every stationary source in the Commonwealth. The magnitude of the economic impact on Virginia industries due to the inflexibility of the proposed amendments cannot be ascertained. But in the light of the success of the voluntary initiatives already taken by coal mine operators and DMME's documented willingness to regulate fugitive dust from coal haul trucks, the proposals are wholly unnecessary.

Furthermore, between DMME and DEQ, DMME is in the best position and is the best-equipped to tackle this issue. DMME is already staffed and already has the requisite expertise to effectively require and enforce permit conditions for controlling fugitive dust. Delegating DMME's authority to DEQ would require significant time and resources, and would be a waste of the state's precious fiscal resources.

RESPONSE: As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation.

18. **SUBJECT:** Stationary source regulations.

COMMENTER: Alpha Natural Resources

TEXT: If rulemaking is to take place, the proposed amendments to the stationary source regulations are not appropriate. The provisions that petitioners propose to amend, 9VAC5-40-90 and 9VAC5-50-90, were promulgated by the board to regulate fugitive dust at new and modified stationary sources and existing stationary sources. A "stationary source" is any building, structure, facility or installation which emits or may emit any air pollutant. As described in 9VAC5-10-20, a "stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same 'major group' (i.e., which have the same 2-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21)." Haul trucks traveling on public roads are not within the scope of this definition. Obviously, a coal truck is not a building, structure, facility or installation.

Also, coal haul trucking operations do not fall within the second part of the definition. First and most importantly, the major group for coal mine operations is 12. The activities listed for establishments under major group 12 are coal mining activities; trucking and hauling operations on public roads are not included. Rather, the trucking operations fall under major group 42, motor freight transportation and warehousing. Second, the trucking operations may or may not be "under the control of the same person" that operates the coal mine. The determination of whether the hauling activities are a

stationary source should not turn on whether the same owner directs both activities. It would be illogical to regulate trucks leaving coal mines that belong to the mine operator and not regulate all other trucks leaving the site or any other site.

RESPONSE: 9VAC5-40-90 and 9VAC5-50-90 apply, as appropriate, to each source of fugitive dust emissions at a stationary source. In accordance with the general definition of "source" found at 9VAC5-10-20 of 9VAC5-10 (General Definitions), a source is "any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals."

"Fugitive dust" is defined in 9VAC5-40-70 and 9VAC5-50-70 as "particulate matter composed of soil or other materials of natural origin, or both. Fugitive dust may include emissions from haul roads, wind erosion of exposed surfaces and storage piles and other activities in which the material is either removed, transported or redistributed." While every effort is made to organize the regulations in a logical manner, control of fugitive dust, by its very nature, does not fall neatly into a single category. It is most expedient and convenient to regulate fugitive dust generated by mobile sources in the current stationary source category. The commenter does not suggest an alternative way of regulating fugitive dust from trucks; however, locating such requirements in a new, separate regulation or chapter would be unnecessarily complex, and more difficult for regulated entities to comply with.

19. **SUBJECT:** Statewide regulations for local issues; emissions from electric generating plants.

COMMENTER: Birchwood Power Partners

TEXT: It would be more effective to revise the rules that apply to specific sources of concern rather than those that apply to general source categories such as the rules proposed for revision. The concern the amendment is designed to address is a small subset of all the stationary sources in Virginia. However, the proposed amendments would apply to all existing and new stationary sources of air pollution in the state. DEQ has already imposed terms and conditions addressing fugitive dust emissions from electric generating plants in the state. For example, under the terms of Birchwood's Title V and PSD permits, the facility implements a number of fugitive dust measures that are either specifically required by the permit or have been adopted as best management practices (i.e., "reasonable precautions"). Such measures include the following:

- The facility only purchases coal that has been washed to remove coal fines.
- The coal unloading system is equipped with wet suppression that engages each time coal is unloaded from a railcar.
- The coal pile is monitored for fugitive dust with wet suppression applied if blowing dust is observed.
- The ash and lime silos, coal crushers, coal reclaim bunkers and tripper deck are equipped with fabric filter dust cabinets to prevent fugitive dust.
- All coal conveyors and transfer points are covered to reduce wind blow dust.
- The facility monitors for the presence of coal ash on all roadways, and uses a water truck to apply water to the roadway at least once per weekday except when the roads are adequately wet from rainwater or during freezing conditions.
- On a daily basis, plant personnel inspect the baghouse slab and scrubber hopper areas for ash. If ash is discovered, plant personnel vacuum or wash down the areas.
- Prior to loading ash into disposal trucks, water is mixed with the ash in a pug mill to reduce windblown ash.
- To reduce blowing dust from disposal trucks while traveling down roads, the truck beds are equipped with a fabric cover, which is placed over the ash prior to travel.

RESPONSE: As discussed in the response to comment 2, existing regulations and guidance already address the petitioners' concerns. DMME's fugitive dust regulations and guidance are specific to the mining industry. In contrast, the air quality regulations are designed to address a wide range of potential fugitive dust issues for various industries throughout the Commonwealth. Working cooperatively, both sets of regulations provide adequate controls of fugitive dust. As discussed elsewhere, the general nature of the air quality rule allows sources of various types, including electric generating facilities, the flexibility needed to address their source type as well as site-specific conditions. It is important that sources work closely with the appropriate state agencies as well as the affected community in order to successfully control fugitive dust.

20. **SUBJECT:** Relationship of DMME and DEQ regulations.

COMMENTER: Birchwood Power Partners

TEXT: It is our understanding that DEQ is working cooperatively with DMME to put measures into place to address fugitive dust concerns in communities where coal handling and loading facilities are located. DMME has the responsibility and authority to implement the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (Chapter 19, Title 45.1 of the Code of Virginia). The regulations promulgated by DMME to fulfill this responsibility require mine owners and operators to obtain a permit (4VAC25-130-773) and meet the standards set forth in the rules for various structures, including roads (4VAC25-130-816).

The application to obtain a permit from DMME must be submitted prior to initiation of any mining activity, and must include, as described in 4VAC25-130-780 18(b)(10):

A description of steps to be taken to comply with the requirements of the *Clean Air Act* (42 USC § 7401 et seq.), the Clean Water Act (33 USC § 1251 et seq.), and other applicable *air* and water quality laws and regulations and health and safety standards. [Emphasis added.]

Any new road must meet the general performance requirements for roads, including the following requirements of 4VAC25-130-816.150:

(b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to: (1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices . . . (e) Maintenance (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the division.

In addition to meeting the general requirements for roads, primary roads must also meet the surfacing and maintenance requirements set forth in 4VAC25-130-816.151:

(e) Primary roads shall be surfaced with rock, crushed stone, gravel, asphalt, or other material approved by the division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. (f) Maintenance. Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. Sediment control structures shall be cleaned regularly and when sediment accumulation may impair their functioning. Maintenance shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

To obtain a permit, the applicant must also demonstrate that all existing roads that may be used in the proposed mining activity also, as stated in 4VAC25-130-773.16(c)(12)(i), "control or minimize erosion and siltation, *air* and water *pollution*, and damage to public or private property. [Emphasis added.]

The regulations provide for public participation during review of the permit application (4VAC25-130-733.13). Once a permit has been issued, DMME is required to conduct at least one partial inspection a month and at least one full inspection a year of each active surface coal mining and reclamation operation under its jurisdiction, as required by 4VAC25-130-840.11(a). If the owner or operator is found to be in violation of any part of the permit, DMME has the authority to require cessation of all or part of the operation, as stated in 4VAC25-130-843.11(a)(1):

An authorized representative of the director shall immediately order a cessation of a coal exploration or a surface mining and reclamation operation or the relevant portion thereof, if the representative finds, on the basis of any inspection, any condition or practice, or any violation of the Act, this chapter, or any condition of a permit or an exploration approval imposed under the Act, or this chapter which: (i) Creates an imminent danger to the health or safety of the public; or (ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, *air*, or water resources. [Emphasis added.]

Since coal mining and processing facilities are not usually large enough to be required to obtain an air permit, the potential for fugitive dust cannot be assessed by DEQ prior to the initiation of the mining activities. In contrast, the DMME rules apply to any coal mining activities that extract more than 250 tons of coal for other than personal use. As noted above, consideration of the minimization of air pollution (including fugitive dust) associated with the proposed mining activities is part of DMME's permitting process. As required by 4VAC25-130-773.13(c), citizens that are concerned about the potential impact of fugitive emissions may submit comments to DMME during the public comment period, and request an informal conference.

Similarly, DMME already makes routine inspections of mining facilities, whereas DEQ would have to initiate an inspection in response to a complaint. For these reasons, the regulations and permitting program being implemented by DMME are a more effective way of addressing the petitioners' concerns than modifying the DEQ rule that applies to fugitive dust in general.

DEQ and DMME should continue to work cooperatively to address fugitive dust emissions from coal mining and processing facilities.

RESPONSE: As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation. DEQ and DMME are, as addressed in the response to comment 1, committed to working cooperatively to protect public health and welfare.

21. **SUBJECT:** DMME/DEQ authorities.

COMMENTER: Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: DMME has announced that it will regulate its permit holders in regard to fugitive dust both on and off permit sites. A memorandum to this effect was recently released to coal operators and presented to the board at its November 2009 meeting. DEQ is not currently staffed to enforce fugitive dust regulations at mine sites. DMME is already staffed,

equipped, and familiar with the facilities and areas of interest. There is no need, especially during this difficult period of state agency belt-tightening, for DEQ to duplicate DMME's regulatory efforts.

RESPONSE: As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation. As discussed in the response to comment 2, adoption of unnecessary regulatory provisions would not be an appropriate use of scarce state resources.

22. **SUBJECT:** Existing regulatory requirements.

COMMENTER: Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: Virginia's existing regulatory requirements already provide a strong foundation for protection of the public while maintaining the necessary flexibility to address complex and variable conditions in the field. The petitioners' proposal, if adopted, would unnecessarily and negatively affect all industries capable of producing fugitive dust.

RESPONSE: As discussed in the response to comment 2, the existing regulations and guidance already address the petitioners' concerns. Working cooperatively, both DMME and DEQ's regulations provide adequate controls of fugitive dust.

23. **SUBJECT:** Actions taken to address fugitive dust concerns/DEQ/DMME cooperation.

COMMENTER: Virginia Independent Power Producers

TEXT: Information presented at the November 2009 board meeting indicated that DEQ and DMME have been working cooperatively to address dust concerns in and near the town of Roda. Such information indicated that substantial progress had been made in addressing dust problems and that regulatory enforcement of the two state agencies, working cooperatively, would continue.

DEQ and DMME have entered into an MOA to work cooperatively to "facilitate efficient and effective administration of applicable state and federal environmental laws, regulations, and policies for the control of fugitive dust on an immediately adjacent to active coal mining sites." The MOA rightly names DMME as the lead agency for issuing and enforcing permits for mining activities. Under the MOA, DMME will notify DEQ of off-site fugitive dust complaints and the two agencies will coordinate their investigations of the alleged violation.

Because DMME already has the authority to regulate the sources identified in the petition, has implemented a permitting program for those sources and has issued recent guidance that incorporates all of the control techniques listed in the petition, the regulations and permitting program being implemented by DMME are a more effective way of addressing the concerns of the petitioners than modifying the DEQ rule that applies to fugitive emissions in general. While DEQ and DMME should continue to work together cooperatively to address fugitive dust emissions from coal mining and processing facilities, the regulatory amendments to the current DEQ fugitive dust rules are not necessary.

RESPONSE: As discussed in the response to comments 1 and 2, DEQ and DMME will continue their successful collaboration in addressing fugitive dust situations. DMME, as discussed elsewhere, is the agency with the primary authority and the capability of addressing emissions specific to the mining industry.

24. **SUBJECT:** Scope and effect of proposed amendments.

COMMENTER: Virginia Independent Power Producers

TEXT: The regulatory amendments proposed by the petitioners are too broad; if adopted, they would apply to all existing and new stationary sources of air pollution, while the complaints that stimulated the petition pertain only to coal handling and loading facilities. The proposed regulatory amendments are also extremely vague and, if adopted, would be subject to misunderstanding and to numerous disputes.

RESPONSE: As discussed in the response to comment 2 and elsewhere, the proposed amendments are too broad in the sense that they would apply statewide to a wide variety of sources. As discussed in the response to 4 and elsewhere, the proposed amendments are, rather than too vague, too specific in prescribing controls suitable to the mining industry to the numerous sources of fugitive dust. Because of this, we agree that the inclusion of mining-specific provisions in general fugitive dust provisions would indeed create the potential for misunderstanding.

25. **SUBJECT:** Support for the petition.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: The petition asks that the measures that are to be considered reasonable related to dust problems in southwest Virginia be strengthened and clarified. Endorsing that path will assure the citizens of coal communities that measures that have previously been implemented voluntarily will remain in place and that other communities of southwest Virginia will benefit from these same measures as well.

RESPONSE: As discussed in the response to comment 2, use of a regulation intended to address fugitive dust issues from a wide range of sources throughout the state is not appropriate for addressing issues relative to a particular industry in a particular portion of the state. Expansion of the regulation's list of reasonable precautions, as discussed elsewhere, does not guarantee that voluntary measures will become permanent. The regulations specify that reasonable precautions may include, but are not limited to, a brief list of potential controls which are essentially examples. Sources are not limited

to implementing these controls and no others, nor are sources required to implement each and every one of these controls. Rather, the regulation imparts a source the flexibility to handle fugitive dust issues specific to their situation, including local conditions and the nature of the industry.

26. **SUBJECT:** DMME guidance.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: Presently, DMME has new guidance for road dust compliance and should it be determined that dust control plans aren't adequate, DMME would require plans with permit applications or when an application comes up for renewal. The largest single drawback to this plan of action is found in the numerous complaints that have been registered with DMME in the last few years with almost no violations written and no immediate relief endorsed or enforced by DMME. The DMME guidance states that "since January 2005, the Division has investigated approximately 250 complaints from citizens concerning tracking of material or fugitive dust from permitted haul roads and coal surface mining operations" and that for "the majority" the DMME took no enforcement action. In other words, their reputation precedes them and it is not acceptable.

No one in these communities wishes to wait for permit renewal before dust problems are addressed. I encourage consideration of whether DMME has the authority to solve these problems and whether they have the will to do so. Consider carefully whether the climate at DMME and DEQ has really been transformed and if so, how and why and whether the current reasoning is likely to change the climate permanently or whether as Dr. Aneja's study becomes history, so will all the measures taken so expediently in response to that study.

RESPONSE: As discussed in the response to comment 1, DMME has worked closely with DEQ, as well as other government agencies, the general public, and the regulated community, to resolve a specific issue within a specific area. DMME and DEQ have entered into an MOA that describes how the agencies will coordinate their responses in the future. We are confident that this coordinated approach enables both agencies to effectively deal with fugitive dust issues relative to the mining industry.

The guidance document (Guidance Memorandum No. 29-09: November 9, 2009) issued by DMME states that in reviewing a revision, new permit, or renewal application, DMME will consider the current or potential situation to determine whether fugitive dust may be a concern. In the event DMME observes a situation where fugitive dust from a permitted operation is an issue, DMME may issue the permittee appropriate enforcement action and possible civil penalties to compel compliance. In addition, if the potential for a continual fugitive dust problem exists, DMME may request by a revision order notice (RON) a more comprehensive road maintenance plan from the permittee to address the potential or actual problem. The RON would compel the permittee to develop and implement a more comprehensive plan that will specify the measures the company will take to better control and minimize tracking of material onto public roads and the generation of fugitive dust that results from its operation's traffic.

As discussed elsewhere, the current DEQ regulation, as well as the recommended changes offered by the petitioners, does not require that those specific measures be formally adopted into a permit. Rather, because it is a statewide regulation designed to deal with a statewide issue in a flexible way, the list of reasonable precautions is merely an initial list of options for consideration for an affected source to use in controlling fugitive dust emissions in a way that works for both the specific industry and the community in which it operates. Adding a series of options that are particular to the mining industry is not appropriate for these regulations, and is best approached through DMME's permitting process.

27. **SUBJECT:** Implementation of reasonable measures in Roda.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: After a presentation to the board, those involved in mining in the area of Roda immediately put in place measures to help alleviate the dust problems, even before DEQ could install air monitors. In a sense, the industry at that point strongly argued our case for us through their actions. They put in place measures that they obviously considered reasonable to help alleviate the problems associated with fugitive and coal dust flowing from and being carried from mining operations into living communities. All these measures, at present, are voluntary and DEQ's commitment to ensure that these become permanent is non-existent. Now, with the evidence that these measures can in fact improve the quality of air in the area, through the test results obtained by DEQ's air monitors, these measures should become permanent and encompass other communities in southwest Virginia so they may also participate in improved air quality.

RESPONSE: As discussed elsewhere, voluntary measures undertaken by the mining companies have been effective in controlling fugitive dust in the Roda area. However, revising the list of what are considered to be reasonable measures does not guarantee the permanent imposition of those specific measures on any particular company or to any regulated entities throughout the state. Even if those provisions were to be made mandatory, they would still not preclude a fugitive dust problem from occurring under different scenarios than those anticipated by the petitioners, nor would they necessarily correct a fugitive dust problem associated with a different type of industry.

The guidance documents issued by DMME are best suited for addressing fugitive dust issues at mining operations. As discussed in the response to comment 26, DMME's guidance states that in reviewing a revision, new permit, or renewal application, DMME will consider the current or potential situation to determine whether fugitive dust may be a

concern. In the event DMME observes a situation where fugitive dust from a permitted operation is an issue, DMME may issue the permittee appropriate enforcement action and possible civil penalties to compel compliance. In addition, if the potential for a continual fugitive dust problem exists, DMME may request by a RON a more comprehensive road maintenance plan from the permittee to address the potential or actual problem. The RON would compel the permittee to develop and implement a more comprehensive plan that will specify the measures the company will take to better control and minimize tracking of material onto public roads and the generation of fugitive dust that results from its operation's traffic.

28. **SUBJECT:** Fugitive dust in certain localities.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: Photographs illustrating the fugitive dust issue in the area from the communities of Stephens, Appalachia, and Stonega have been provided. The hugely detrimental-to-human-health dust problems in Roda are not isolated to that lone community but are indicative of what is being endured by many coal mining communities in southwest Virginia.

RESPONSE: The commenter's concerns, and those of the affected communities, are appreciated.

29. **SUBJECT:** Preventive health care.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: Revising the fugitive dust regulations would contribute to preventive health care for Wise County and southwest Virginia's citizens by improving the quality of air that southwest Virginians breathe. Every year, thousands from across the area come to the Wise County fairgrounds for their health care and through the generosity of many institutions and personnel along with equipment and materials, they receive their once a year encounter with healthcare providers. Each of these thousands of people who come receive multiples of procedures, making the treatment encounters many thousands more than the head count. It is one of the most important reasons for you as a board to engage in matters to strengthen the regulations that exist to aid in the prevention of medical conditions that come from breathing and living with excessive amounts of dust and the pollutants contained in it.

The medical community knows full well what the repercussions of this are. I point you to "Mortality in Appalachian coal mining regions: The value of statistical life lost" (Michael Hendryx and Melissa M. Ahem, Public Health Reports, July-August 2009: 124, 7) in which it is said: "Previous research that examined specific forms of mortality in coal mining areas found that chronic forms of heart, respiratory, and kidney disease, as well as lung cancer, remained elevated after adjusting for socioeconomic and behavioral factors. Elevated adjusted mortality occurred in both males and females, suggesting that the effects were not due to occupational exposure, as almost all coal miners are men. These illnesses are consistent with a hypothesis of exposure to water and air pollution from mining activities. There is evidence that the coal mining industry is a significant source of both air and water pollution."

RESPONSE: The control of fugitive dust is indeed necessary to protect public health.

30. **SUBJECT:** Support for the petition.

COMMENTER: 71 citizens, collected and submitted by Southern Appalachian Mountain Stewards (SAMS)

TEXT: I am writing today to express my support for the petition to create additional regulations to ensure that coal dust is controlled in our communities. I want to thank the Air Board for being an ally to us in our situation. For years now we have suffered from the terrible health and quality of life impacts that the excessive amounts of coal dust has had on our communities. We need a change and we need this to stop. The petition outlines specific actions that will better control the dust and thus improve the quality of life in these coal-producing communities that we call home. Specific actions such as installing and using truck washers, rumble strips or speed bumps, and street sweepers, will make a positive impact on our communities and we urge you to add them to the current regulations. These measures need to be mandatory; our health relies on this and we deserve it. We don't need our homes and lives destroyed by what's happening in our communities. Please help us by making dust control mandatory for trucks and surface mine operations.

RESPONSE: The commenters' concerns are appreciated. As discussed elsewhere, the current regulations of the board are designed to address fugitive dust problems not only in southwest Virginia, but throughout the Commonwealth as well. These regulations work in conjunction with the regulations of other agencies in order to control dust from trucks and surface mine operations, as well as from a wide range of other source types.

31. **SUBJECT:** Support for the petition.

COMMENTER: 100 citizen emails sponsored by the Sierra Club

TEXT: My friends in southwest Virginia have asked me to write you in support of the petition they submitted to the board to amend dust regulations to require coal operators to take certain reasonable precautions to prevent the release of dust from coal trucks in residential communities. I have learned about the dust situation in communities like Roda, Virginia and I am very concerned about the impacts of this dust on the health and quality of life for people who must endure such conditions. I have also learned that citizens from southwest Virginia have been asking for almost a year for help in alleviating dust problems in the communities they live in. They appreciate the attention the board has already given this matter, but feel they have not seen actions that fully address the seriousness of the problems. All Virginians deserve to breathe clean air; the proposed dust regulations will help achieve that important goal. Please

take the opportunity presented to the board to adopt strict, enforceable controls to keep dust from invading the communities, homes, and lungs of the people in southwest Virginia.

RESPONSE: The commenters' concerns are appreciated. As discussed elsewhere, the regulations of the board are designed to address fugitive dust problems not only in southwest Virginia, but throughout the Commonwealth as well. We are confident that DEQ's coordinated efforts with DMME will protect the citizens of southwest Virginia, as well as those in other communities throughout the Commonwealth.

PETITION FOR RULEMAKING, EXTREMELY LOW FREQUENCY MAGNETIC FIELDS - PUBLIC PARTICIPATION REPORT AND REQUEST FOR BOARD ACTION: On March 26, 2010, the board received a petition from Kenneth C. Strong to initiate a rulemaking concerning extremely low frequency (ELF) magnetic fields generated by high-voltage electric power transmission lines. The petitioner has expressed concern over the siting of public recreational trails within proximity to such lines, and the potential exposure to children of ELF, which the National Institute of Environmental Health Sciences considers to be possibly carcinogenic to humans. Today, the department is recommending that the board deny the petitioner's request for the reasons set forth below.

To solicit comment from the public on the petition, the department issued a notice that provided for receiving written comment during a comment period.

The petitioner is requesting the board to provide that for any outdoor overhead electric power transmission line of 115 volts or more, the owners of any underlying real property and the transmission line company shall not grant permission for public recreational trails or public recreational areas within the company's right-of-way or within an area typical of company right-of-ways should no legal right-of-way agreement exist, except that necessary crossings are exempt.

Below are the reasons for the department's recommendation.

1. Neither high-voltage electric power transmission lines nor the ELF magnetic fields generated by them are either a source of air pollutants or air pollutants in and of themselves. The board is restricted by statute to regulating air pollutants; it cannot regulate phenomena such as those identified by the petitioner.
2. The board has the authority to control pollutants emitted from a variety of sources; the board does not have the authority to control land use in proximity to a specific air pollution source. Such siting criteria and zoning issues are governed by other governmental agencies.
3. The State Corporation Commission is the entity responsible for approval of siting for electric power transmission lines. The board has no authority with respect to approval or regulation of siting for power lines.

It is recommended that the board deny the petitioner's request for the reasons set forth above.

Summary And Analysis Of Public Comments For Petition For Rulemaking Concerning Extremely Low Frequency Magnetic Fields

Below is a summary of each person's comment and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the air quality program and the applicable statutory provisions governing the program.

1. **SUBJECT:** Power lines and activities on national, state and local recreation lands.

COMMENTER: Virginia Department of Conservation and Recreation

TEXT: The regulation as written would have a detrimental impact on positive activities taking place within national, state and local recreation lands. For example, Rockwood Park in Chesterfield utilizes land under a high-voltage power line, as do many other parks within the state. Parks and Recreation Director Mike Golden states that "loss of recreational use of existing areas under overhead power lines and the loss of potential future opportunities would reduce opportunities for people to take part in positive and healthy activities." Concerning this issue, Chesterfield County's Health Department has noted: "Virginia Department of Health has been required for years to do period reports on this, all of which did not reach any conclusion that activities should be restricted." If the health risks detailed in the petition are legitimate, it would seem that the people living in neighborhoods adjacent to these corridors are at much greater risk than the trail user who makes temporary visits.

RESPONSE: The commenter's position on the recreational use of existing areas under overhead power lines is appreciated.

2. **SUBJECT:** Utility corridors for recreational and active transportation purposes.

COMMENTER: Virginia Bicycling Federation (VBF); New River Valley Bicycling Association

TEXT: Rather than banning recreational use of these corridors, we suggest citizens use their own good judgment to choose whether to use these facilities or not.

Since the petition regards recreational use of electrical corridors, we believe exposure for the majority of citizens would be limited and would likely have no adverse health impact. In our estimation, the science alleging adverse health effects is, at best, inconclusive. We can find no specific research of short-term exposure nor impact to health from electrical fields that recreational users might experience.

In fact, the VBF actually supports using utility corridors for recreational and active transportation purposes by cyclists, walkers, runners and equestrian users. We believe that natural gas, petroleum and electric corridors offer a valuable resource for creation of potentially hundreds of miles of recreational and active transportation facilities. Trails such as the Washington and Old Dominion (W&OD) Trail in northern Virginia are used by thousands of citizens each week for recreational and transportation purposes. Not only does the W&OD promote exercise and decrease automobile congestion by getting citizens out of their cars, we would contend that the W&OD may potentially save lives by providing alternatives to riding on busy streets and roads.

The bigger health threat to Americans, in our opinion, is obesity and related diseases due to lack of physical activity. According to the Journal of the American Medical Association (Flegal, JAMA 2010; 303(3):199) 68% of Americans are overweight or obese. This manifests itself in increased heart and renal disease, diabetes, strokes and hypertension. Much of this can be attributed to a lack of exercise. Providing trails along these corridors could help fight this growing epidemic. Utilizing electrical corridors for recreational purposes, many of which pass through urban settings, could provide opportunities for thousands of citizens to walk, run and cycle. We feel the health benefits far outweigh any alleged adverse impact due to magnetic fields.

In summary, this regulation is unnecessary, and banning use of these electrical corridors for recreation purposes may, in fact, be detrimental to public health. Let people use their own judgment to decide to use these corridors, depending on their beliefs, preferences and needs.

RESPONSE: We agree that the scientific evidence of health risks associated with exposure to ELF is inconclusive. The commenters' statements about the health benefits of exercise are well taken.

3. **SUBJECT:** Limiting access to areas near power lines.

COMMENTER: Mid-Atlantic Off Road Enthusiasts (MORE)

TEXT: Banning use of these areas will do more to remove access to healthy activities such as mountain biking and hiking than mitigate health risks. The user can use their own discretion as to their own health and safety. Power lines are near or run through many parks. Limiting access makes no sense to split or cut off areas that the public can access for the sake of some perceived minor health risk.

RESPONSE: The commenters' remarks about health and safety are well taken.

4. **SUBJECT:** Absence of health hazard; need for outdoor recreation.

COMMENTER: Appalachian Trail Conservancy (ATC)

TEXT: ATC is a volunteer-based, private nonprofit organization dedicated to the conservation of the Appalachian National Scenic Trail (AT). ATC and volunteer maintaining-club practice is to cross power line rights-of-way by the shortest practicable distance, often at right angles. We do not design the AT to linger under power lines. Therefore, this would appear to allow the AT to be exempted from the proposed rule. However, we feel a need to comment on the petition as it relates to all recreational trails. ELF exposure in communities, schools, and private homes outside but immediately adjacent to utility rights-of-way is probably much more serious over the long-term than exposure related to recreational trails. If in fact these lines present a significant health hazard, we would expect that the Commonwealth and/or federal agencies would be regulating these. The petition does not present information about exposure rates on trails, or exposure rates in the general landscape, making it difficult to compare these exposure rates such that a new regulation must be established specifically for recreational trails. Of course we care about the health of children, but today more children are probably going to be adversely affected by obesity related diseases than from diseases related to magnetic fields. Recreational trails have a role in engaging children in outdoor recreation and exercise. More recently recreational trails are being used for transportation, which ultimately should offset other environmental concerns.

RESPONSE: The commenters' statements about the health and environmental benefits of recreational trails are well taken. We agree that the scientific evidence of health risks associated with exposure to transmission lines is inconclusive.

5. **SUBJECT:** Absence of health hazard; need for outdoor recreation.

COMMENTER: Tidewater Bicycle Association

TEXT: A cause-effect relationship between high voltage transmission lines and adverse health effects has not been sufficiently established to warrant a ban. Generally, we support public trails in power line and utility right of ways as

a cost effective means for localities in Hampton Roads to provide recreation, health, fitness, and transportation options for our residents.

RESPONSE: We agree that the scientific evidence of health risks associated with exposure to transmission lines is inconclusive. The commenter's position on the benefits of public trails is appreciated.

6. **SUBJECT:** Public use of transmission line rights-of-way.

COMMENTER: Dominion Virginia Power (DVP)

TEXT: The petitioner suggests that DVP does not allow public use of the rights-of-way of transmission lines (Petition, page 4). The language cited is taken out of context. The wording on the company's website is intended to specifically indicate that the use of rights-of-way for off-road recreational vehicles such as ATVs and dirt bikes is not permitted. Other prohibited uses are also noted. Most prohibited uses are not allowed due to safety and reliability concerns. For example, if a building were allowed under the line and caught fire for some reason, the fire could cause an outage on the transmission line. Therefore buildings are not allowed under the lines to help minimize the risk of transmission line outages that could impact electric service to thousands of households and businesses. DVP has never considered EMF to be a health concern that warrants prohibition of any public use of the transmission line rights-of-way. The Virginia SCC has agreed with this position as noted in the recent actions cited elsewhere. DVP's treatment of and public access to rights-of-way can be accessed under "Transmission Topics" at <http://www.dom.com/about/safety/public-use-of-rights-of-ways.jsp>.

On the other hand there are many uses of the rights-of-way by the public that are permitted. Often owners and developers of shopping centers and office complexes take advantage of the land beneath the transmission lines for vehicle parking lots. Communities have used the land for "green space" in residential subdivisions. This green space is often used for recreational purposes such as walking trails, sports fields, tennis/basketball courts, etc. Occasionally landowners will utilize the land for community gardens.

Any regulatory actions that would prohibit such uses of transmission line rights-of-way for these purposes would deprive the landowners of their rights to such. In the more congested urban areas, many times the only areas still available for such land use are the corridors that have been established for overhead transmission lines.

In most cases, DVP does not own the property under transmission lines in fee, but has acquired easement rights to construct, maintain and operate the electric transmission facilities. Any regulatory action restricting the uses of private property without compensation may have serious legal implications. There are some complex legal issues that could arise if property that has been utilized from many years for recreational purposes suddenly can no longer be used for such activities. Many developments have met zoning requirements for green space, park/recreation space, open space, etc. by utilizing land encumbered by transmission line rights-of-ways. Prohibition of the continued use of these areas for recreational uses could make some properties become non-compliant with zoning requirements.

If regulatory actions were taken that prohibited the use of private property for recreational activities there would be no realistic way to enforce such restrictions.

RESPONSE: The description of transmission line rights-of-way is appreciated. Issues regarding land use and zoning are not the purview of the board and are best handled by other agencies as appropriate.

7. **SUBJECT:** Property and land use issues.

COMMENTER: Old Dominion Electric Cooperative (ODEC)/Virginia, Maryland and Delaware Association of Electric Cooperatives (VMDAEC)

TEXT: Efforts to enforce a regulation such as the one proposed would put a severe burden on the regulatory resources of the board and would have a number of unforeseen consequences, including adverse impacts on the use and alienability of real property. The petitioner seeks to place controls on the use of the real property underlying electric transmission lines, which he identifies as the right-of-way or "an area typical of ... right-of-ways." He seeks to accomplish this by prohibiting both the owners of the property and "the transmission line Company" from granting permission for "public recreation trails or public recreational areas" within that area.

More often than not this prohibition would affect the property owner, not the transmission line operator, because the land under a transmission line generally is not owned in fee by the operator of the transmission line. The transmission line operator usually has acquired only a limited easement over the real property for the right-of-way, pursuant to which it can construct, operate, maintain, and repair its equipment and facilities. The primary impact of this proposed regulation therefore would fall on numerous property owners across the state. A transmission line right-of-way is not generally regarded as an enhancement of the value of real property; additional limits on the possible use of such property would represent a further diminishment of value and may make the property even less attractive to a prospective buyer.

How the board would enforce the proposed regulation raises significant questions. The petitioner's proposed limitation appears to be one that would run with the land--meaning whoever owns the land would face the same restriction. The mere fact that transmission lines throughout Virginia traverse both public and private lands presents a significant challenge to the practical enforcement of the regulation proposed by the petitioner. Such a limitation would have to be recorded somewhere, probably with the deed to the land, possibly with the right-of-way easement.

Assuring that such limitations were recorded on all the titles to affected land across the Commonwealth would be a monumental undertaking. An additional issue to consider is some of the actual impacts of enforcing the limitation. There are currently a number of beneficial permitted public uses of transmission line right-of-ways. The areas under and along the path of transmission lines, particularly as they wend their way through populated areas to provide essential electric service, often are currently being put to use for hiking trails, athletic fields, basketball courts, tennis courts, parts of golf courses, and other recreational activities. Public libraries are sometimes located within such areas. In many circumstances developers have included land encumbered by transmission line right-of-ways in meeting zoning requirements for open areas, green space, parks, and recreation facilities. Owners and developers of office parks, shopping centers, and new industrial developments often make use of the land beneath transmission lines for vehicle parking lots, walkways, or green space. Communities sometimes dedicate the encumbered areas for green space or community gardens in residential subdivisions.

Regulatory action that would prohibit the use of transmission line right-of-ways for such purposes could significantly affect many communities and would deprive landowners of the right and ability to dedicate their land to such beneficial uses. In some congested areas, particularly urban areas, the only land readily available for recreational and open space use are the right-of-way corridors that have been established for electric transmission lines. Prohibiting the continued use of existing public recreational areas under or near transmission lines could make some properties non-compliant with zoning requirements and could prove to be very unpopular.

A number of complex legal issues arise if property that for many years has been used for public recreational purposes or to meet other public needs could no longer be used for such purposes. A regulatory action changing and restricting a landowner's right to such beneficial uses of private property, without any compensation, could have a number of other serious unforeseen social and legal implications. Overall, considered realistically, a regulatory action that restricted the use of private property for public recreational activities would likely prove essentially impossible to enforce.

RESPONSE: The description of transmission line land use is appreciated. As discussed in the response to comment 6, issues regarding land use and zoning are not the purview of the board and are best handled by other agencies as appropriate.

8. **SUBJECT:** Statutory authority.

COMMENTER: Dominion Virginia Power (DVP)

TEXT: Pursuant to § 10.1-1308 of the State Air Pollution Control Law, the board has the power to promulgate regulations abating, controlling, and prohibiting air pollution throughout the Commonwealth. Section 10.1-1300 defines "air pollution" as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property." Although the petitioner would read the definition of "air pollution" to encompass virtually any substance, including man-made structures, in the outdoor atmosphere, it is only proper to interpret the definition in the context of pollutants regulated by the State Air Pollution Control Law and the federal Clean Air Act.

The types of substances regulated by the federal Clean Air Act and Virginia's major air programs (State Operating Permits, Minor New Source Review, Prevention of Significant Deterioration New Source Review, and Nonattainment Area New Source Review, Articles 5, 6, 8, and 9 of 9VAC5-80) include chemicals, particulate matter and biological materials such as ozone, carbon monoxide, nitrogen oxides, sulfur dioxide, lead, volatile organic compounds, and mercury. In no instance has a man-made structure been considered "air pollution" or an "air pollutant" under either the State Air Pollution Control Law or the federal Clean Air Act. To interpret "air pollution" to include man-made structures such as a "high-voltage electric power transmission line conductor" or other structure from which electric and magnetic fields can emanate (i.e., cell phone towers, light poles, radio towers) would lead to an impermissible and improper expansion of the State Air Pollution Control Law. Likewise, even the regulation of electromagnetic fields (EMF) as "air pollution" would be an unreasonable expansion of the State Air Pollution Control Law just as it would be to regulate other parts of the electromagnetic spectrum (i.e., radio waves, microwaves, infrared, visible light, X-rays).

That this would be an unreasonable expansion of the State Air Pollution Control Law is further evidenced by the fact that the General Assembly has committed regulation and oversight of electric and magnetic fields associated with high-voltage transmission lines to other agencies of the state government. The State Corporation Commission (SCC), which regulates the construction and operation of such lines, is required by statute to consider and reasonably minimize their probable effects on health and safety before they may be approved (see Va. Code § 56-46.1, A, B, and D).

Accordingly, the petition should be denied because the regulation of high-voltage transmission lines is outside the statutory authority of the board.

RESPONSE: We agree that the board is limited by statute to regulating air pollution, and that structures such as transmission lines are not air pollutants themselves and do not emit air pollutants. The SCC is the agency with the primary responsibility for consideration of the health and safety effects of transmission lines.

9. **SUBJECT:** Nature of transmission lines and magnetic fields.

COMMENTER: Dominion Virginia Power (DVP)

TEXT: The petitioner suggests that DVP is releasing a substance in the air. The conductors of an electric transmission line can be made of aluminum, but are not exclusively aluminum. No "substance" or particulate matter is released from these conductors. Magnetic forces are created by the electrical currents that flow in these conductors when electrical consumers are using electricity. The magnetic forces generated are at a frequency of 60 cycles per second (or Hertz) since the alternating current system in the United States is 60 Hertz.

In addition, transmission lines are not the only sources of 60 Hertz magnetic fields. Any electrical conductor that has 60 Hertz alternating current flowing in it will produce a 60 Hertz magnetic field. Wiring within homes, offices, schools and other buildings will generate magnetic fields any time electricity is being used. Household and office appliances plugged into the receptacle on the wall will produce a magnetic field when being used, i.e., electric current is flowing.

RESPONSE: The commenter's description of electrical conductors and magnetic forces is appreciated. We agree that no substance that is subject to regulation by the board is emitted by transmission lines.

10. **SUBJECT:** Statutory authority.

COMMENTER: Old Dominion Electric Cooperative (ODEC)/Virginia, Maryland and Delaware Association of Electric Cooperatives (VMDAEC)

TEXT: Under §10.1-1308 of the Virginia Code, the board is granted the power to promulgate regulations abating, controlling and prohibiting air pollution throughout the Commonwealth. Code §10.1-1300 defines "air pollution" as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property."

The petitioner has inappropriately and inaccurately applied the definition in order to have what amounts to the entire electric transmission system being classified as air pollution. The word "substance" can be defined as follows: "substance *n.* 1. a. That which has mass and occupies space; matter. b. A material of a particular kind or constitution...." (The American Heritage Dictionary of the English Language, Fourth Edition, 2009, Houghton Mifflin Company.) While the term "substance" is broad, it needs to be applied in the context of the types of pollutants regulated under the State Air Pollution Control Law and the Clean Air Act. Section 302(g) of the federal Clean Air Act defines air pollution somewhat differently:

The term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.

This definition refers to a "substance or matter" that is "emitted into or otherwise enters the ambient air." The question, then, should focus on the meaning intended in using the term "substance(s)" that are present in or emitted into the outdoor atmosphere or air.

Focusing on the Virginia Code, clearly, the term "substance" is intended to mean a tangible pollutant present within the outdoor atmosphere. Defining a bare, aluminum-based, overhead high-voltage electric power transmission line conductor and/or the alternating motion of the conductor's electrons which establish an ELF magnetic field around the conductor as a substance present in the outdoor atmosphere, to be regulated as an air pollutant, is unsupported, implausible, and borders on the absurd. The petitioner's claims require adoption of an unfounded and untenable interpretation of the board's responsibilities under the State Air Pollution Control Law.

There is no substance or pollutant emitted from the conductors of an electric transmission line. EMFs are created by the flow of electrical current through the conductor, are not tangible, have no mass, and neither could or should be regulated under the Virginia air pollution regulations. The types of substances regulated by the federal Clean Air Act and Virginia's air programs, including the major and minor New Source Review (NSR) Programs and the state operating permit program, include various criteria and hazardous air pollutants, all of which are tangible substances or matter emitted into the atmosphere.

Further evidence that the petitioner's position calls for an unreasonable expansion of the State Air Pollution Control Law is demonstrated by the fact that the Virginia General Assembly has assigned the oversight and regulation of electric and magnetic fields associated with high-voltage transmission lines to other state government agencies. As discussed elsewhere, the Virginia Department of Health (VDH), in concert with the SCC, has reviewed and analyzed various research and studies regarding the health and safety effects of high-voltage transmission lines due to EMF. The SCC, which regulates the construction and operation of such lines, is required by statute to consider and to take reasonable steps to minimize probable effects of electric transmission lines on health and safety before siting and construction may be approved. See Va. Code § 56-46.1 A, B and D.

The petitioner also notes that the NIEHS has issued exposure reduction recommendations and that "there are signs of implementation progress in Virginia." If there are signs of voluntary implementation, no purpose is served in placing undue burden on a regulatory agency that has no clear ties to previous studies, reviews, or proposed regulatory action. Following the assumptions of the petitioner, and referencing Virginia Code § 10.1308, the phrase "after having studied

air pollution in the various areas of the Commonwealth . . ." would place a significant burden on the VDEQ to study electric transmission lines as air pollution, in spite of the fact that the agency has no previous history in this area. This would be an unnecessary and imprudent course of action. In the footnote on page 3 of the petition, the petitioner notes that (1) there is already careful attention to the process and due consideration of alternatives that may reduce EMF exposure within the transmission line siting process conducted by the SCC, and (2) the Environmental Protection Agency (EPA), as well as other regulatory and health agencies, continue to educate the public on means of reducing EMF exposure. No additional regulation is necessary or appropriate.

Furthermore, the requested regulatory language would be impractical, if not impossible for the VDEQ to enforce. The evaluation of any proposed regulation should involve (1) compelling evidence to warrant regulation, (2) consideration of the enforceability of the regulation, and (3) consideration of the potential resources needed to implement and enforce that regulation. The board should reject the regulation proposed in this petition on all three counts.

The petition should be denied for a very basic reason--the regulation of high-voltage transmission lines is not within the statutory authority of the board. The two agencies with statutory authority, which may be authorized to undertake such regulation--the SCC and VDH--have found no causal relationship between EMF and adverse effects on human health. In contested proceedings the SCC has considered, and rejected, the claims now brought to the board by the petitioner. The regulation the petitioner proposes would be essentially impossible to administer. The proposal to regulate electric transmission lines as air pollution simply should be rejected.

RESPONSE: As discussed in the response to comment 8, we agree that the board is limited by statute to regulating air pollution, and that structures such as transmission lines are not air pollutants themselves and do not emit air pollutants. The SCC is the agency with the primary responsibility for consideration of the health and safety effects of transmission lines.

11. **SUBJECT:** Statutory authority.

COMMENTER: Potomac-Appalachian Transmission Highline Allegheny Virginia Transmission Corporation (PATH-VA); Appalachian Power

TEXT: The petition provides no citation to any specific statutory authorization of the board to regulate the use of real property, nor does it provide any basis for the assertion that electromagnetic fields are "air pollution" and thus within the board's statutory jurisdiction. The board is a creature of statute and has only that jurisdiction conferred on it by the legislature. (See *Mirant Potomac River, LLC v. Commonwealth of Virginia*, 2009 Va. App. LEXIS 287 *29, June 23, 2009: "the Board's conduct is limited to the promulgation of regulations delegated to it by the General Assembly.") These threshold issues must be fully addressed before the board could contemplate any action similar to that requested by the petitioner.

RESPONSE: As discussed in the response to comment 8, we agree that the board is limited by statute to regulating air pollution, and that structures such as transmission lines are not air pollutants themselves and do not emit air pollutants. The SCC is the agency with the primary responsibility for consideration of the health and safety effects of transmission lines.

12. **SUBJECT:** State Corporation Commission and Virginia Department of Health positions on ELF/EMF.

COMMENTER: Dominion Virginia Power (DVP); Potomac-Appalachian Transmission Highline Allegheny Virginia Transmission Corporation (PATH-VA); Appalachian Power; Old Dominion Electric Cooperative (ODEC)/Virginia, Maryland and Delaware Association of Electric Cooperatives (VMDAEC)

TEXT: In a recent proceeding before the SCC in which Dominion sought approval to construct a new underground 230 kilovolt (kV) transmission line and 230-34.5 substation, the petitioner presented similar arguments that EMF causes adverse human health impacts, including childhood cancer. In the Final Order approving construction and operation of the proposed transmission project, the SCC stated the following:

Public Witness Kenneth Strong [the petitioner] presented testimony regarding a potential impact upon childhood leukemia rates from extremely low frequency EMF emanated from nearby high voltage transmission lines. Company witness, Dr. Cole, testified that some early epidemiological studies showed a weak association between EMF and childhood leukemia, but later studies were either inconclusive or showed no relationship between EMF and childhood leukemia. The Hearing examiner concluded that "the Project does not require any prudent avoidance measures since electric transmission line electromagnetic fields do not represent a human health hazard. Based on the evidence, we do not believe the remedies requested by Mr. Strong are necessary." (Final Order, May 29, 2009: Application of Virginia Electric and Power Company For approval and certification of Beaumeade-NIVO 230 kV Underground Transmission line and 230-24.5 kV NIVO Substation under Va. Code § 56.46.1 and the Utility Facilities Act, Va. Code § 56.265.1 et seq., and as a pilot project pursuant to HB 1319, Case No. PUE-2008-00063; footnotes omitted.)

More recently, the petitioner's claims were rejected by SCC Chief Hearing Examiner Deborah V. Ellenberg:

Mr. Strong, a public witness, offered extensive testimony on ELF magnetic fields and recommended that the Commission prohibit the Company from granting permission for any public trails or recreational areas in its right-of-way; prohibit the Company from granting any public permission for any public activity in its right-of-way; and

order the Company to post "No Trespassing" signs where the transmission line is located on property owned by the Company. In support of his position he cited a number of studies from authoritative sources. He was concerned that public trails or recreational areas would encourage children into the right-of-way, and thereby increase their risk of exposure to ELF magnetic fields that are a "possible human carcinogen."

The Company presented the testimony of Dr. Cole in rebuttal. He testified that no scientific or regulatory body, including LARC, cited by Mr. Strong, and the National Toxicology Program, had categorized EMF as a carcinogen for human beings, and that these were the two most widely regarded agencies concerning categorization of agents. Dr. Cole testified that there were no significant health effects associated with EMF, and that it was unlikely EMF would prove to be a

cause of cancer in human beings. In contrast with studies of smoking and lung cancer, noted Dr. Cole, which yielded findings that were strong, consistent, and biologically plausible, the studies of EMF and cancer have always been weak, inconsistent, and implausible.

Mr. Strong cited to the Company's public access policy which provides that permission is required from Dominion Virginia Power to utilize the right-of-way for any public activity. Moreover, the Company advises that it will not grant permission if safety and liability issues are identified. I find that EMF has not been identified as a carcinogen for human beings despite extensive study over many years, and there is, therefore, no basis on which to prohibit the Company from authorizing appropriate uses of its right-of-way. The Company should be afforded the right and responsibility to provide permission to use its right-of-way if circumstances are warranted, and consistent with its policy, refrain from granting permission if safety issues are identified. (May 4, 2010: Application of Virginia Electric and Power Company For approval and certification of electric transmission facilities under Va. Code § 56-46.1 and the Utility Facilities Act, Va. Code § 56-265.1 et seq., Hayes-Yorktown 230 kV transmission line, Case No. PUE-2009-00049, Report of Deborah V. Ellenberg, Chief Hearing Examiner, p. 23; footnotes omitted.)

The SCC considers EMF in every application for construction of new transmission lines 138kV and above. Each applicant must include data on the levels of both electric and magnetic fields produce by the proposed facilities. In addition, the applicants must state the reasons why the construction and operation of the facilities will not result in significant health effects. The applicants are also requested to provide reference to credible scientific research that has been published since the Virginia Department of Health's (VDH's) final report in October 2000. An example of these detailed applications can be found on the SCC website at: Beaumeade – NIVO 230kV Underground Transmission Lines – Application Appendix (see page 74), at

http://docket.scc.state.va.us/CyberDocs/Libraries/Default_Library/Common/frameviewdsp.asp?doc=82524&lib=CAS_EWEBP%5FLIB&mimetype=application%2Fpdf&rendition=native.

VDH was directed to monitor ongoing research on the health and safety effects of high-voltage transmission lines and to make annual reports to the General Assembly, which activities were discontinued after 13 years of reports failed to show a causal relationship between electric and magnetic fields associated with such lines and human health risks. See, for example, SJR 26 (1984), SJR 126 (1985), SJR 278 (1993), and SB 379 (1998). In the final VDH report issued on October 31, 2000 (for the entire report and other information from The National Cancer Institute and the National Institute of Environmental Health Sciences, see <http://www.dom.com/about/electric-transmission/emf-electromagnetic-fields.jsp>), Dr. Khizar Wasti, PhD, and Vicki L. O'Dell of VDH reached the following conclusion:

Based on the review and analysis of the exhaustive literature review and other research projects completed under the EMF-RAPID program, the Virginia Department of Health is of the opinion that there is no conclusive and convincing evidence that exposure to extremely low frequency EMF emanated from nearby high voltage transmission lines is causally associated with an increased incidence of cancer or other detrimental health effects in humans. Even if it is assumed that there is an increased risk of cancer as implied in some epidemiologic studies, the empirical relative risk appears to be fairly small in magnitude and the observed association appears to be tenuous. The studies published in the literature lack clear demonstration of a cause and effect relationship as well as a definitive dose response gradient. A two- to three-fold increase in relative risk of certain cancers observed in some studies is within the range where experimental bias or confounding factors cannot be completely ruled out.

Evidence from the laboratory studies has thus far failed to confirm that exposure to EMF causes cancer in experimental animals. Laboratory experiments have also failed to show how EMF could initiate or promote the growth of cancer. The results of both *in vivo* and *in vitro* experimental studies conducted so far do not lend support to an association between exposure to EMF and cancer.

Furthermore, scientific proof of a causal association is established using multiple criteria, only one of which is epidemiologic association. Other important criteria in confirming causality (including strength of association, consistency and specificity of observations, appropriate temporal relationship, dose-response relationship, biological plausibility, and experimental verification) have not been satisfied for the implicit adverse effects of power-line frequency EMF.

Note that the DOH findings in 2000 are consistent with the more recent conclusions by the World Health Organization (WHO), Health Canada, and other health authorities.

Furthermore, scientific proof of a causal association is established using multiple criteria, only one of which is epidemiologic association. Other important criteria in confirming causality (including strength of association, consistency and specificity of observations, appropriate temporal relationship, dose-response relationship, biological plausibility, and experimental verification) have not been satisfied for the implicit adverse effects of power-line frequency EMF.

As discussed elsewhere, the regulation of high-voltage transmission lines is outside the statutory authority of the board. Moreover, the two agencies to which such regulation has been committed--SCC and VDH--have both found no causal relationship between EMF and adverse effects on human health, and the SCC has considered, and specifically rejected, the same claims repeated by the petitioner now to the board.

The petitioner states that customary practice is to establish regulations around current classification rather than speculate on the outcome of future evaluations. We would agree with this statement, in that regulation should be driven by good science and available evidence, without regard for supposition. There is clearly not enough evidence at this time to support restrictive regulation, and there should be no assumption of future research results.

RESPONSE: The scientific evidence of health risks associated with exposure to ELF is indeed inconclusive. Moreover, we agree with the observation that the two agencies with the authority to regulate transmission lines and their associated electromagnetic fields--SCC and VDH--have already declined to do so in the absence of any specific health or safety risks.

13. **SUBJECT:** Status of current research.

COMMENTER: Dominion Virginia Power (DVP); Old Dominion Electric Cooperative (ODEC)/Virginia, Maryland and Delaware Association of Electric Cooperatives (VMDAEC)

TEXT: The petitioner has selectively pulled excerpts from the World Health Organization's (WHO) Environmental Health Criteria (EHC) 238 to support his view. For example on page 2 of his petition, he chooses to include the following language from EHC 238:

Scientific evidence suggesting that everyday, chronic low-intensity (above 0.3–0.4 μ T) power-frequency magnetic field exposure poses a health risk is based on epidemiological studies demonstrating a consistent pattern of increased risk for childhood leukemia.

However, he omits the next two sentences in EHC 238, which go on to state:

Uncertainties in the hazard assessment include the role that control selection bias and exposure misclassification might have on the observed relationship between magnetic fields and childhood leukemia. In addition, virtually all of the laboratory evidence and the mechanistic evidence fail to support a relationship between low-level ELF magnetic fields and changes in biological function or disease status.

Further, as outlined in § 1.1.12 of EHC 238, Protective Measures, the International Agency for research on Cancer (IARC) clearly states that causal evidence with regard to EMF is limited and only precautionary measures are warranted:

However, it is not recommended that the limit values in exposure guidelines be reduced to some arbitrary level in the name of precaution. Such practice undermines the scientific foundation on which the limits are based and is likely to be an expensive and not necessarily effective way of providing protection.

National Authorities should implement an effective and open communication strategy to enable informed decision-making by all stakeholders; this should include information on how individuals can reduce their own exposure.

The petitioner also includes excerpts from several witnesses' testimony regarding EMF in proceedings before the State Corporation Commission. He failed to cite the recent testimony of Dr. Philip Cole, MD, PhD, offered on February 9, 2010 on behalf of DVP in SCC Case No. PUE-2009-00049. (Dr. Cole is a professor emeritus of Epidemiology at the University of Alabama at Birmingham and is familiar with issues relating to electric and magnetic fields and concerns about cancer.) In that testimony, Dr. Cole was asked to respond to the question, "What is the general status of research on the issue?" His response was the following:

The question of EMF as a possible cause of cancer in human beings has been investigated by epidemiologists in more than 200 studies, now spanning 31 years. There also have been hundreds of animal and molecular studies reported. In addition, innumerable reviews of the question have been prepared both by academic and regulatory bodies.

Despite this extensive research, EMF is not recognized as a human carcinogen. No scientific or regulatory body, including the International Agency for Research on Cancer ("IARC"), the cancer research arm of the World Health Organization, and the National Toxicology Program of the United States, which is an arm of the U.S. Public Health Service, has categorized EMF as a carcinogen for human beings. These are the two most widely regarded agencies that are considered authoritative in terms of their approach to categorization of agents. Comments filed in this proceeding cite observations from other agencies, and even these agencies have not categorized EMF as a human carcinogen. There is no precedent for an agent that has received such

intense investigation and that has failed to be recognized as a carcinogen – subsequently to become so recognized.

Dr. Cole also summarized the results of the research on the health effects of EMF as follows:

During a 29-year period, hundreds of epidemiologic and possibly thousands of other types of biomedical studies have been conducted on the possible health effects of EMF. At present, EMF is not recognized as a cause of, or contributor to, any disease of human beings. In my opinion, and based on my knowledge of the EMF literature and of the history of cancer epidemiology, it is unlikely that EMF will prove to be a cause of cancer in human beings.

RESPONSE: The summary of current research with respect to ELF/ELM is appreciated. We agree that the scientific evidence of health risks associated with exposure to ELF is inconclusive.

14. **SUBJECT:** Federal standards.

COMMENTER: Dominion Virginia Power (DVP)

TEXT: There are no federal standards in the United States limiting occupational or residential exposure to power line EMF. U.S. EPA reports that much of the research about power lines and the potential health effects of exposure to electromagnetic fields is inconclusive, and that the general scientific consensus is that the evidence available is weak and is not sufficient to establish a definitive cause-effect relationship (see <http://www.epa.gov/radtown/power-line.html>).

The National Institute of Health's National Institute of Environmental Health Sciences (NIEHS) also affirms that a casual relationship between residential exposure to EMF and an increased risk of cancer has not been established. Based on review of scientific research and studies, the NIEHS recommends continued education on practical ways of reducing exposure to EMF, but makes no mention for the need for action to regulate exposure to EMF (see <http://www.niehs.nih/health/topics/agents/emf>).

RESPONSE: We agree that there are no federal standards, including those from EPA and NIEHS, governing ELF/EMF. Note that EPA is responsible for issuing standards for air quality, which the board, in turn, implements.

15. **SUBJECT:** Presence of EMF beyond transmission lines.

COMMENTER: Potomac-Appalachian Transmission Highline Allegheny Virginia Transmission Corporation (PATH-VA); Appalachian Power

TEXT: The extremely low frequency EMF addressed in the petition are associated with a multitude of sources throughout our daily environments, not just on transmission right-of-ways. In fact, EMF are ubiquitous--they occur wherever there is a flow of electric current. They are associated with many sources, including appliances, equipment, and electric wiring in homes, offices, hospitals and other workplaces, as well as in schools and other facilities where children spend significant time each day. EMF are also associated with the electric distribution lines that bring electric power to our homes, workplaces and stores throughout the neighborhoods, cities, and towns of Virginia. There is nothing unusual about the EMF on transmission right-of-ways, and the exposures that children and adults experience daily as a result of the numerous sources of EMF throughout our homes, schools, and working environments can equal or exceed the EMF levels on transmission right-of-ways. Given that EMF are present in virtually every aspect of modern, electrified society, the petitioner's proposal for the board to issue regulations based on alleged health effects from EMF associated with high-voltage transmission lines would open the board to calls for wide-scale regulation of EMF from a multitude of indoor and outdoor sources.

RESPONSE: The commenter's discussion of the level of ordinary EMF exposure is acknowledged.

16. **SUBJECT:** Scientific evidence of health effects.

COMMENTER: Potomac-Appalachian Transmission Highline Allegheny Virginia Transmission Corporation (PATH-VA); Appalachian Power; Old Dominion Electric Cooperative (ODEC)/Virginia, Maryland and Delaware Association of Electric Cooperatives (VMDAEC)

TEXT: There is no scientific justification for the proposal. The petitioner repeatedly cites NIEHS and WHO as authorities for the proposition that children are at risk from EMF. These authorities, however, did not find that exposure to EMF presents a health risk to children or adults. In a 1999 report to Congress, NIEHS concluded that "[t]he NIEHS believes that the probability that ELF-EMF exposure is truly a health risk is currently small. The weak epidemiological associations and the lack of any laboratory support for these associations provide only marginal scientific support that exposure to this agent is causing any degree of harm." (NIEHS Report on Health Effects from Exposure to Power Line Frequency Electric and Magnetic Fields, NIEHS Publication No. 99-4493.) NIEHS prepared this report for Congress at the end of a multi-year, \$45 million national research program to investigate alleged health risks; it provides the following statement:

[t]he conclusion of this report is insufficient to warrant aggressive regulatory concern. However, because virtually everyone in the United States uses electricity and therefore is routinely exposed to ELF-EMF, passive regulatory action is warranted such as a continued emphasis on educating both the public and the regulated community on means aimed at reducing exposures. The NIEHS does not believe that other cancers or non-cancer health outcomes provide sufficient evidence of a risk to currently warrant concern.

Advocacy groups have opposing views concerning the health effects of ELF-EMF. Some advocacy groups want complete exoneration and others want a more serious indictment. Our conclusions are prudent and consistent with the scientific data. I am satisfied with the report and believe it provides a pragmatic, scientifically-driven basis for any further regulatory review.

Similarly, following a detailed review of EMF research in 2007, WHO stated that "[b]ased on a recent in-depth review of the scientific literature, the WHO concluded that current evidence does not confirm the existence of any health consequences from exposure to low level electromagnetic field." WHO has also concluded that "[d]espite extensive research, to date there is no evidence to conclude that exposure to low level electromagnetic fields is harmful to human health." (About Electromagnetic Fields, World Health Organization, 2010.)

Other national and international health authorities have reached consistent conclusions. For example, in January 2010, Canada's national health authority concluded that "when all of the studies are evaluated together, the evidence suggesting that EMFs may contribute to an increased risk of cancer is very weak." (Electric and Magnetic Fields at Extremely Low Frequencies, Health Canada, Catalogue #H13-7/70-2010E-PDF, 2010.) Health Canada's analysis also addressed the classification of EMF as "possibly carcinogenic" by the International Agency for Research on Cancer (IARC):

The International Agency for Research on Cancer (IARC) has evaluated the scientific data and has classified ELF magnetic fields as being 'possibly carcinogenic' to humans. IARC based this classification on the following:

- human health population studies showing weak evidence of an association with childhood leukemia; and
- a large database of laboratory study results showing inadequate evidence of an association with cancer in animals.

To put this into context, it is important to understand that the "possibly carcinogenic" classification is also applied to coffee, gasoline engine exhaust, and pickled vegetables, and is often used for agents that require further study.

RESPONSE: As discussed in the response to comment 13, we agree that the scientific evidence of the harmful effects of ELF/EMF is inconclusive.

17. **SUBJECT:** NIEHS position on regulatory action.

COMMENTER: Potomac-Appalachian Transmission Highline Allegheny Virginia Transmission Corporation (PATH-VA); Appalachian Power

TEXT: The petition misconstrues the position taken by NIEHS with regard to potential regulatory action. Rather than encourage any regulation of EMF, NIEHS expressly noted that "[r]egulatory actions prompted by this review of ELF-EMF are not the purview of the NIEHS." Moreover, NIEHS concluded that there was no scientific justification for "aggressive" regulation. Instead, NIEHS validated existing voluntary practices of educating the public and the regulatory community about EMF, and the continuation of existing industry practices for the siting of transmission lines. What the NIEHS did not recommend was new and dramatic restrictions to permissible land uses on transmission line right-of-ways:

The NIEHS suggests that the level and strength of evidence supporting ELF-EMF exposure as a human health hazard are insufficient to warrant aggressive regulatory actions; thus, we do not recommend actions such as stringent standards on electric appliances and a national program to bury all transmission and distribution lines. Instead the evidence suggests passive measures such as a continued emphasis on educating both the public and the regulated community on means aimed at reducing exposures. NIEHS suggests that the power industry continue its current practice of siting power lines to reduce exposures and continue to explore ways to reduce the creation of magnetic fields around transmission and distribution lines without creating new hazards. We also encourage technologies that lower exposures from neighborhood distribution lines provided that they do not increase other risks, such as those from accidental electrocution or fire. (NIEHS Report on Health Effects from Exposure to Power-Line Frequency Electric and Magnetic Fields.)

RESPONSE: We appreciate the commenters' discussion of NIEHS recommendations for addressing ELF/ELM, and agree that different means of addressing the issue other than air quality regulation is appropriate.

18. **SUBJECT:** SCC jurisdiction and decisions.

COMMENTER: Potomac-Appalachian Transmission Highline Allegheny Virginia Transmission Corporation (PATH-VA); Appalachian Power

TEXT: The petition fails to alert the board that the precise regulatory action sought from this board has been rejected repeatedly by the SCC over the past two years. As discussed in comment 12, the petitioner sought to prohibit the company from granting permission for any public trails, recreational areas, or any public activity in its right-of-way. The petitioner's claims that regulatory action is needed to address public health risks from EMF have been considered in a number of proceedings before the SCC over the past year. See, e.g., Final Order, May 29, 2009, Application of Virginia Electric and Power Company, Case No. PUE-2008-00063, State Corporation Commission, State of Virginia; Final Order, June 24, 2009, Application of Appalachian Power Company, Case No. PUE-2008-00079, State

Corporation Commission, State of Virginia; Final Order, December 21, 2009, Application of Appalachian Power Company, Case No. PUE-2008-00096, State Corporation Commission, State of Virginia. In each case, after due consideration of the merits of the record evidence, the SCC has denied the petitioner's claims.

In light of these recent rulings from the SCC, what petitioner seeks to accomplish before this board is little more than an end run around the SCC. The SCC is the regulatory agency with primary jurisdiction over health and safety issues related to the design, construction, routing and operation of transmission lines in the Commonwealth, including land uses permitted within transmission line right-of-ways. Given the SCC's extensive jurisdiction over the issue of what land uses are appropriate and permissible on transmission line rights-of-way, the board should not sanction the petitioner's attempt to ignore the SCC's prior and recent rulings against the regulatory action the petitioner seeks.

RESPONSE: The commenter's discussion of previous SCC actions is acknowledged. As discussed elsewhere, the SCC is the agency in Virginia responsible for making decisions about the siting and use of transmission lines.

HIGH PRIORITY VIOLATORS (HPV's) FOR THE SECOND QUARTER, 2010

NOV's Issued from January through March 2010.

DEQ Region	Facility	Brief Description	Status
NRO	<p>City of Manassas / Virginia Municipal Energy Association (VMEA)</p> <p>Manassas City, Virginia</p> <p>Registration No. 71977</p> <p>SIC 4911 Electrical Services NAICS 221112 Utilities (Diesel Electric Generators)</p>	<p>Discovery dates – 2/17/2010</p> <p>Alleged violations:</p> <p>Failure to submit the Title V Semi-Annual Monitoring Report (SAMR) within the required time frame.</p>	<p>NOV - Issued 03/02/2010 CO - <i>In Development</i></p> <p>Additional Information:</p> <p>The SAMR was submitted.</p>
TRO	<p>Western Fumigation /Western Industries-North, LLC</p> <p>Suffolk City, Virginia</p> <p>Registration No. 61580</p> <p>SIC 4959 Sanitary Services, NEC NAICS 488119 Transportation and Warehousing</p>	<p>Discovery dates – 1/11/2010</p> <p>Alleged violations:</p> <p>Construction and operation of a fumigation facility without acquiring the appropriate permits.</p>	<p>NOV - Issued 02/05/2010 CO - <i>In Development</i></p> <p>Additional Information:</p> <p>On April 30, 2010, DEQ received the Facility "Case-by-case MACT determination" as required by Section 112G of the 1970 Clean Air Act (42 USC §7401 <i>et seq.</i>).</p> <p>Negotiations are ongoing.</p>

CO's Issued from January through March 2010.

PRO	<p>Omega Protein - Reedville</p> <p>Reedville, Virginia Northumberland County</p> <p>Registration No. 40278</p> <p>SIC 2077</p>	<p>Discovery dates – 7/23/09</p> <p>Alleged violations:</p> <p>Failure to maintain control equipment, report malfunctions, and conduct required stack testing of an emissions unit.</p>	<p>NOV - Issued 9/24/09 CO - Issued 03/26/2010 Civil Penalty - \$22,045.00</p> <p>Additional Information:</p> <p><i>Conduct testing no later than July 15, 2010 for Sulfur Dioxides contained</i></p>
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	Animal and Marine Fats & Oils NAICS 311613 Food Mfg. – Animal Slaughtering and Processing		in the airless dryers (D1 and D2) waste evaporator or condenser vent streams as exhausted through boilers BW1 and BW2, By June 1, 2010 Omega must have permanently removed the fish meal flame dryers 1R and 5, meal cooler MC1, amended the 2 nd 2008 SAMR and the 2008 ACC and submitted an updated operating and maintenance plan.
BRRO	Intermet Radford Foundry Radford, Virginia Radford City Registration No. 21256 SIC 3321 Gray Iron Foundries NAICS 331511 Primary Metal Mfg.– Iron Foundries	Discovery dates – 6/9/09 Alleged violations: Failed to submit CY 2008 Title V Annual Compliance Certification (ACC) and Semi-Annual Monitoring Report (SAMR) in a timely manner, conduct weekly opacity observations, and keep the associated records.	NOV - Issued 7/20/09 CO - De-Referred Additional Information: Title V ACC and SAMR were both received. The Facility is no longer operating and is in Bankruptcy proceedings. The case was De-referred

CO's In Development – Previously Reported NOV's

TRO	Southeastern Public Service Authority (SPSA) – Refuse Derived Fuel Plant Portsmouth, Virginia Portsmouth City Registration No. 61018 SIC 4961 & 4953 Steam & Air Conditioning sup, & Refuse systems NAICS 221330, 562213 & 562219 Utilities, Solid Waste Combustor, Waste Treatment and Disposal	Discovery date – 4/23/09 Alleged violation: Quarterly Excess Emissions Reports (EERs), document CO limits being exceeded during 6 different quarterly reports since July 2005.	NOV - Issued 4/23/09 CO - <i>In Development</i> Additional Information: On 5/28/09 SPSA informed DEQ that the facility is updating the BMP's to reduce CO emissions and promote complete combustion. The Title V permit was amended on 7/21/09 to incorporate the CO limit from the PSD Permit. April 2010, the facility was purchased by Wheelabrator Portsmouth Inc (Wheelabrator). <i>DEQ is negotiating a joint Order with SPSA and Wheelabrator.</i>
TRO	Royal Fumigation Inc. Suffolk City, Virginia	Discovery dates – 11/30/09 Alleged violations:	NOV - Issued 12/21/09 CO - <i>In Development</i> Additional Information:

Registration No. 61579 SIC 4959 Sanitary Services, NEC NAICS 488119 Transportation and Warehousing	Construction and operation of a fumigation facility without acquiring the appropriate permits.	On April 30, 2010, DEQ received the Facility "Case-by-case MACT determination" as required by Section 112G of the 1970 Clean Air Act (42 USC §7401 <i>et seq.</i>). Negotiations are ongoing.
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EPA NOV's Issued from January through March 2010 - NONE

EPA CO's Issued from January through March 2010 - NONE

EPA CO's In Development – Previously Reported NOV's

**The inspections at the Hopewell facilities were conducted as part of EPA Region III's Hopewell Geographic Initiative, which is an enforcement strategy created, in part to better understand the transfer of volatile organic compounds and hazardous air pollutants between facilities in the Hopewell geographic air shed.*

*EPA	Ashland Aqualon Functional Ingredients (Hercules) Hopewell, Virginia Hopewell City Registration No. 50363 SIC 2869 Industr. Organic Chemical NEC NAICS 325199 Chemical Mfg.	Discovery date – 11/8/07 Alleged violations: Alleged violations of the Cellulose MACT (40 CFR 63 Subpart UUUU) and the associated Leak Detection and Repair (LDAR) program.	EPA NOV - Issued 4/2/09 Additional Information: 7/8/09 - NOV Meeting was held with EPA, DEQ, and the Responsible Party
*EPA	Hopewell Regional Wastewater Treatment Facility (WWTP) Hopewell, Virginia Hopewell City Registration No. 50735 SIC 4952 Sewage Systems NAICS 221320 Utilities, Water, Sewage and Other Systems	Discovery dates – 11/7/07 Alleged violations: Violations of 40 CFR 63 Subpart VVV (Publicly Owned Treatment Works - POTW) and Reasonably Available Control Technology (RACT) that include failure the to provide appropriate notification, meet control requirements, conduct inspections and monitoring, properly calculate emission values.	NOV - Issued 7/6/09 Additional Information: 9/23/09 - NOV Meeting was held with EPA, DEQ, and the Responsible Party
*EPA	DuPont Teijin Films Hopewell, Virginia Chesterfield County Registration No. 50418	Discovery dates – 4/18/08 Alleged violations: Violations of 40 CFR 63 Subpart JJJ (Polymers and Resins Group IV), Subpart H (Equipment Leaks), and	NOV - Issued 7/17/09 Additional Information: 9/10/09 - NOV Meeting was held with EPA, DEQ, and the Responsible Party

	<p>SIC 2821 Plastic Material/Synthetic resins NAICS 325211 Chemical - resin, Synthetic rubber, and artificial synthetic fibers.</p>	<p>Subpart EEEE (Organic Liquid Distribution (Non-Gasoline) that include improper use of emission debits and credits; failure to provide certifications, reports and plans; improper emission controls; and failure to identify and repair leaking components.</p>	
*EPA	<p>Honeywell International Inc.</p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50232</p> <p>SIC 2869, 2899, 2819 Industr. Organic Chemical NEC, Chemical & Chem. Prep, NEC, Industrial Inorganic Chemicals NAICS 325199 Chemical Mfg.</p>	<p>Discovery date – 11/6/07</p> <p>Alleged violations:</p> <p>1st NOV - Alleged violations of the Benzene Waste NESHAP (40 CFR 61 Subpart FF) and the associated Leak Detection and Repair (LDAR) program for the Organic HAPs from Equipment Leaks MACT (40 CFR 63 Subpart H)</p> <p>2nd NOV - Annual NOx and PM10 emission limit exceedances in 2004, 2005, 2006, and 2007 at the A, C, D, and E trains of the Area 9 hydroxylamine production unit.</p>	<p>EPA 1st NOV - Issued 3/10/09 EPA 2nd NOV - Issued 8/21/09</p> <p>Additional Information:</p> <p>NOV Meetings have been held with EPA, DEQ, and the Responsible Party on 5/27/09, 11/17/09 and 03/25/10.</p>