

TENTATIVE AGENDA
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, APRIL 4, 2014
DEPARTMENT OF ENVIRONMENTAL QUALITY
629 EAST MAIN STREET
TRAINING ROOM
RICHMOND, VIRGINIA

Convene – 9:30 a.m.

			TAB
I.	Review and Approve Agenda		
II.	Minutes (December 6, 2013)		A
III.	Regulations - Final Open Burning (9VAC5-130, Rev. E12)	Major	B
IV.	Regulations - Final Exempt Major New Source Review, PM2.5 (9VAC5-80, Rev. A14)	Sabasteanski	C
V.	Petitions Major New Source Review - Presentation of Petition	Sabasteanski	D
VI.	High Priority Violators Report	Nicholas	E
VII.	Public Forum		
VIII.	Other Business Legislative Update Air Division Director's Report Future Meetings (confirm June 20, September 5, December 5) Election of Vice-Chair	Jenkins Dowd	

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.

Open Burning (9VAC5 Chapter 130, Rev. E12) - Public Participation Report and Request for Board Action:

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.

Below is a brief summary of the substantive amendments that were originally proposed for public comment.

1. The applicability provisions are modified to establish new parts of the regulation (Part II, Volatile Organic Compound Emissions Control Areas, and Part III, Special Statewide Requirements for Forestry, Agricultural and

Highway Programs), and to specify that open burning prohibitions and restrictions and permissible open burning provisions apply only in VOC emissions control areas.

2. Definitions for "regular burn site" and "volatile organic compound emissions control area" have been added.

3. The reference to "urban areas" has been deleted from the permissible burning provisions for VOC emissions control areas. Open burning is now predicated according to whether a regularly scheduled collection for leaf/yard trimmings or household waste is available.

4. Part III is created to address special statewide requirements for forestry, agricultural and highway programs.

5. Part IV, Local Ordinances, has been modified to stipulate that any model ordinance in VOC control areas must include all prohibitions and restrictions on burning currently imposed in the state regulation. Model ordinances for areas outside of the VOC emissions control areas must, at a minimum, include the general and statewide provisions of the state-wide regulation.

To solicit comment from the public on the proposed regulation amendments, the Department issued a notice that provided for receiving comment during a comment period and at a public hearing. The public participation report containing the original public comments is available upon request. Below is a summary of each person's comments 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 intended purpose of the regulation.

1. **SUBJECT:** Definition of "regular burn site"

COMMENTER: Irene M. Shandruk, U.S. EPA Region 3

TEXT: The definition of "regular burn site" would be easier to understand if it read as follows:

"Regular burn site" means state-owned property where burning conducted by the Virginia Department of Transportation is expected to occur greater than once per year.

RESPONSE: Recommendation accepted with an additional correction. "State-owned" has been changed to "state controlled" to address any property used by but not necessarily owned by the Department of Transportation for controlled burning.

2. **SUBJECT:** Use of terms agricultural and agriculture

COMMENTER: Irene M. Shandruk, U.S. EPA Region 3

TEXT: In section 130-50, "agricultural practices" is used, however, in other sections (130-40-A9 and 130-60-C model ordinance section 000-5), "agriculture practices" is used. Use of terms should be consistent throughout. They should all probably read "agricultural"

RESPONSE: Recommendation accepted

3. **SUBJECT:** 9VAC5-130-40 A 5

COMMENTER: Steven Wright, Roanoke, VA

TEXT: As proposed: 5. ~~In urban areas, open~~ **Open** burning is permitted for the on-site destruction of leaves and tree, yard, and garden trimmings located on the premises of private property, provided that no regularly scheduled ~~public or private~~ collection service for such trimmings is available at the adjacent street or public road. ~~In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.~~

Suggested change (bold language below) to clarify that burning leaves is prohibited in scheduled collection situations and not just "such trimmings": 5. ~~In urban areas, open~~ **Open** burning is permitted for the on-site destruction of leaves and tree, yard, and garden trimmings located on the premises of private property, provided that no regularly scheduled ~~public or private~~ collection service for **leaves, tree, and** such trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.

RESPONSE: Recommendation accepted

4. **SUBJECT:** 9VAC5-130-40 A 5

COMMENTER: W

TEXT: Positive trend, suggest one bit of clarification. These changes generally look like they should provide a positive trend for the air quality and pollutant issues of constituents. It would be good to explicitly add leaves and tree to the latter half of 9VAC5-140[130] A 5 so as to remove possible ambiguity in interpretation. e.g. "collection service for such trimmings" would leave less interpretation if stated as "collection service for leaves, tree, and such trimmings..."

RESPONSE: Recommendation accepted, however final language modified to: 5. ~~In urban areas,~~ ~~open~~ Open burning is permitted for the on-site destruction of leaves and tree, yard, and garden trimmings located on the premises of private property, provided that no regularly scheduled ~~public or private~~ collection service for ~~such~~ leaves and tree, yard and garden trimmings is available at the adjacent street or public road. In nonurban areas, open burning is permitted for the on-site destruction of leaves and tree, yard and garden trimmings located on the premises of private property regardless of the availability of collection service for such trimmings.

Below is a brief summary of the substantive changes the Department is recommending be made to the original proposal. Changes made to the final regulation are strictly editorial; no major changes were made to the proposal.

Major New Source Review, PM_{2.5} (9VAC5 Chapter 80, Rev. A14) - Request for Board Action on Exempt Final Regulation: On October 20, 2010 (75 FR 64864), the U.S. Environmental Protection Agency (EPA) published a final rule establishing Prevention of Significant Deterioration (PSD) new source review provisions to implement significant impact levels (SILs) and a significant monitoring concentration (SMC) for particulate matter less than 2.5 micrometers (PM_{2.5}). SILs are screening tools that are applied in PSD permitting to demonstrate that the proposed source's allowable emissions will not cause or contribute to a violation of the national ambient air quality standards (NAAQS) or increment. The SMC has been used to exempt sources from a requirement in the federal Clean Air Act to collect preconstruction monitoring data for up to 1 year before submitting a permit application in order to help determine existing ambient air quality.

On January 22, 2013, the United States Court of Appeals for the District of Columbia Circuit granted a request from the EPA to vacate and remand to EPA portions of the PSD regulations establishing the SILs for PM_{2.5} so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. The court further vacated the portions of the PSD regulations establishing a PM_{2.5} SMC, finding that the EPA lacked legal authority to adopt and use the PM_{2.5} SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. EPA modified its regulations accordingly on December 9, 2013 (78 FR 73698). In Virginia, where the state administers the new source review program under an approved state implementation plan (SIP), the state must adopt and submit revisions to the SIP to reflect the rule revisions. The revised SIP should be the same as or equivalent to the revised federal program.

The department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

Below is a brief summary of the substantive amendments the department is recommending be made to the regulation.

1. In 9VAC5-80-1695 E, the exemption level for PM_{2.5} has been removed. [page 4]
2. In 9VAC5-80-1715 A, air quality impact levels for PM_{2.5} have been removed. [page 5]

Major New Source Review (9VAC5 Chapter 80) - Public Participation Report and Request for Board Action: On October 22, 2013, the department received a petition from the Virginia Manufacturers Association to initiate a rulemaking concerning major new source review (Articles 8 and 9 of 9VAC5-80, Permits for Stationary Sources). Today, the department is recommending that the board grant the petitioner's request for the reasons set forth below.

The petitioner is requesting the board to amend Article 8, Permits for Major Stationary Sources and Major Modifications Locating in Prevention of Significant Deterioration Areas (9VAC5-80-1605 et seq.) and Article 9, Permits for Major Stationary Sources and Major Modifications Locating in Nonattainment Areas or the Ozone Transport Region (9VAC5-80-2000 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) as follows:

1. Amend the definition of "baseline actual emissions" in 9VAC5-80-1615 C and 9VAC5-80-2010 C and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to use a 10-year lookback period, thus making the Virginia regulations no more stringent than federally required.
2. Amend subdivision b 4 of the definition of "baseline actual emissions" in 9VAC5-80-1615 C and 9VAC5-80-2010 C, amend 9VAC5-80-1865 E and 9VAC5-80-2144 E, and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to use different lookback periods for different regulated NSR pollutants, thus making the Virginia regulations no more stringent than federally required.
3. Amend 9VAC5-80-1615 C, 9VAC5-80-1865 C 1 f, 9VAC5-80-2010 C and 9VAC5-80-2144 C 1 f, and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would

allow VMA members and other facility owners in Virginia to obtain PALs for 10 years, rather than only 5 years, thus making the Virginia regulations no more stringent than federally required.

4. Amend the definition of "emissions unit" and add a definition of "replacement unit" in 9VAC5-80-1615 C and 9VAC5-80-2010 C, and make any other regulatory changes necessary to make the Virginia regulation conform with the federal definition. This would allow VMA members and other facility owners in Virginia to use the baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit, thus making the Virginia regulations no more stringent than federally required.

Below are the reasons for the department's recommendation:

1. At the time the Virginia NSR reform regulation amendments were originally being developed, a number of issues were identified that necessitated some deviations from the federal program--including reduction of the lookback period from 10 years to 5--in order to address certain Virginia-specific issues, including considerable uncertainty as to how the NSR reforms would be implemented as a practical matter, and the potential for increases in air pollution.

Additionally, at the time, the board decided to make the lookback period for industry consistent with the lookback period for utilities which is 5 years as specified in the NSR reform rules. Virginia's rules do allow a source to request a 10 year lookback if the source can demonstrate it better represents normal operation. To date, no source has made such a request. The department has gained experience in implementing the program, and has monitored how the program is being implemented in other states. We have not observed any cases of a 10-year lookback resulting in unacceptable emissions increase, and now believe that a transition to the 10-year lookback period for industry, in accordance with the baseline EPA requirements, is appropriate.

2. The department had required the baseline period limitation in order to address specific staff concerns about the potential for a significant negative impact of the multiple pollutant baseline approach on their ability to perform accurate and timely permit issuance and compliance review. Establishment of a single baseline for all pollutants was considered to be, in part, one way to alleviate this concern. The department has since gained experience with the program, and any anticipated problems with implementing multiple baselines have not arisen. Therefore, a transition to this approach in Virginia is now acceptable.

3. The reasons for limiting the PAL duration were similar to the reasons for limiting the length of the lookback period: at the time, a conservative approach to implementing the NSR reforms was thought to be best for the state. The department's experience with PAL-like permits is consistent with industry's observation that it is a long and complicated process to develop a PAL permit. As a result, a 5 year time period is not sufficient enough to fully take advantages that a PAL permit can provide. It is more practical to change the PAL duration to 10 years. No negative air quality impacts have been observed with respect to an extended PAL duration. Indeed, as PALs are environmentally protective, it is important that their use be encouraged, and extending the duration to be consistent with the federal duration is therefore appropriate.

4. The definition of "replacement unit" was added by EPA as an option for states that felt they needed to clarify that facility owners could use the baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit in determining whether a significant emissions increase would occur as a result of the unit replacement. We agree that this provision clarifies the NSR program as EPA intends for it to be implemented, and should be added to the Virginia program.

To solicit comment from the public on the petition, the department issued a notice that provided for receiving written comment during a comment period. 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:** 10-year lookback period vs. a 5-year lookback period.

COMMENTER: DuPont Spruance

TEXT: The currently required 5-year lookback period is unduly restrictive and has the potential for "confiscation" of our facility's productive capacity. Business cycles do occur and can vary greatly in duration and intensity. The "Great Recession" is a real case in point. Some of our production units to this day remain below pre-Recession production rates. New capacity expansion projects in such units would be at a distinct disadvantage as a result of the short 5-year lookback period when determining permitting applicability. Also note that as a result of the "Great Recession," a number of capacity expansion projects have been delayed. If such delays made it necessary to re-visit permitting applicability, the 5-year lookback period would include much of the very slow business cycle period. It could result that permitting of these very same expansion projects could result in subjecting such units to even stricter permit

requirements. It is for these reasons that we believe the 10-year lookback period is more reasonable and would capture an entire business cycle.

RESPONSE: At the time the Virginia NSR reform regulation amendments were originally being developed, a number of issues were identified that necessitated some deviations from the federal program--including reduction of the lookback period from 10 years to 5--in order to address certain Virginia-specific issues, including considerable uncertainty as to how the NSR reforms would be implemented as a practical matter, and the potential for increases in air pollution. Additionally, at the time, the board decided to make the lookback period for industry consistent with the lookback period for utilities which is 5 years as specified in the NSR reform rules. Virginia's rules do allow a source to request a 10 year lookback if the source can demonstrate it better represents normal operation. To date, no source has made such a request. The department has gained experience in implementing the program, and has monitored how the program is being implemented in other states. We have not observed any cases of a 10-year lookback resulting in unacceptable emissions increase, and now believe that a transition to the 10-year lookback period for industry, in accordance with the baseline EPA requirements, is appropriate.

2. **SUBJECT:** Different baseline periods for each pollutant vs. the same consecutive 24-month period for each different regulated NSR pollutant.

COMMENTER: DuPont Spruance

TEXT: There is no compelling reason for Virginia's more restrictive approach. An assumption is being made that all pollutants will increase or decrease in an identical manner (at the same rate) as production increases or decreases. At our facility, this has not always been shown to be the case. For example, we have a section of a production unit that produces a polymer which is shipped to a number of domestic and international facilities. This area is primarily a source of VOCs. Another area of the same production unit produces a yarn product which is a mainly a source of particulates. Both areas, although considered a part of the same emission unit, can operate independently of one another. For example, the polymer production area can continue to run (in order to supply these other facilities) while the yarn facility is shut down. Thus, the emissions of VOC and particulate could operate in an essentially independent manner. As a result, requiring the same consecutive period for each different regulated NSR pollutant can place this facility at a significant disadvantage with regard to permitting applicability.

RESPONSE: The department required the baseline period limitation in order to address specific staff concerns about the potential for a significant negative impact of the multiple pollutant baseline approach on their ability to perform accurate and timely permit issuance and compliance review. Establishment of a single baseline for all pollutants was considered to be, in part, one way to alleviate this concern. As discussed in the response to comment 1, the department has since gained experience with the program, and any anticipated problems with implementing multiple baselines have not arisen. Therefore, a transition to this approach in Virginia is now acceptable.

3. **SUBJECT:** PAL duration.

COMMENTER: DuPont Spruance

TEXT: The DuPont Spruance facility has not considered applying for a PAL due to the elaborate permitting process, recordkeeping and reporting requirements. However, we do recognize that compliance with a PAL may eliminate recurring major NSR concerns and provide needed certainty to the facility over the duration of the PAL. Under the currently more-restrictive Virginia regulations, the duration of the PAL is restricted to only 5 years (vs. the 10-year duration allowed by the EPA). This short renewal cycle serves as an even greater disincentive to businesses to apply for such a permit. The PAL is based on the past actual emissions of that pollutant. As discussed elsewhere, a 10-year business cycle is more reasonable and realistic since studies have shown (as well as our actual experience) that it may take a considerable period for businesses to recover from significant economic downturn periods such as the last major recession. So, for this reason and also for the certainty businesses need in order to survive in today's ever increasingly demanding environment, we agree that the Virginia regulations be changed to allow for 10-year PAL duration. The more restrictive Virginia PAL duration also places Virginia manufacturing facilities at a distinct competitive disadvantage in comparison to other states which could have the effect of influencing companies to locate their manufacturing facilities in a less-restrictive state.

RESPONSE: The reasons for limiting the PAL duration are similar to the reasons for limiting the length of the lookback period: at the time, a conservative approach to implementing the NSR reforms was thought to be best for the state. The department's experience with PAL-like permits is consistent with industry's observation that it is a long and complicated process to develop a PAL permit. As a result, a 5 year time period is not sufficient enough to fully take advantages that a PAL permit can provide. It is more practical to change the PAL duration to 10 years. As discussed elsewhere, no negative air quality impacts have been observed with respect to an extended PAL duration. Indeed, as PALs are environmentally protective, it is important that their use be encouraged, and extending the duration to be consistent with the federal duration is therefore appropriate.

4. **SUBJECT:** Replacement unit provisions.

COMMENTER: DuPont Spruance

TEXT: A replacement unit that is similar to the unit being replaced should not be considered as a brand new unit but rather as a unit "modification." It is simply unreasonable and punitive to consider the unit being replaced as having zero emissions. The unit being replaced would likely have relevant historical data that could be used to establish an actual emissions baseline or projection of future actual emissions for such new units. In addition, if Virginia air regulations were left unchanged, it could likely place our facility at a distinct competitive disadvantage compared to most other states that have adopted the EPA replacement unit provisions as written and thus with less onerous permitting regulations. DuPont Spruance has a number of significant competitors with regards to our various product lines. Thankfully, we have not had to replace any emission units since Virginia adopted the much more restrictive replacement unit provisions. Without the EPA's replacement unit provisions, DuPont Spruance could face a significant loss of business due the expense of required unreasonably high level of emission controls, higher permitting fees, considerable amount of time to obtain a major NSR permit due to the increased permit complexity and required EPA and public comment periods involved.

RESPONSE: The definition of "replacement unit" was added by EPA as an option for states that felt they needed to clarify that facility owners could use the baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit in determining whether a significant emissions increase would occur as a result of the unit replacement. We agree that this provision clarifies the NSR program as EPA intends for it to be implemented, and should be added to the Virginia program.

5. **SUBJECT:** 10-year lookback period vs. a 5-year lookback period.

COMMENTER: Georgia-Pacific

TEXT: Limiting the lookback period has the effect of confiscating the productive capacity of facilities that operate in Virginia. Because production is depressed during a business downturn, the actual emissions baseline determined in such a period is also depressed. This magnifies the difference between the facility's emissions prior to a particular facility change and its potential or projected emissions after the change. As part of the federal NSR rulemaking, EPA studied the business cycles for different industries. In the preamble to the rule, EPA stated, "This study found that, for the industries analyzed, business cycles differ markedly by industry, and may vary greatly both in duration and intensity even within a particular industry. Nevertheless, we concluded from the study that 10 years of data is reasonable to capture an entire industry cycle." As such, EPA's final decision on this issue was well-reasoned and supported, as affirmed by the D.C. Circuit Court of Appeals which upheld it, and was made upon completion of an exhaustive study of normal business cycles for a range of industries.

RESPONSE: As discussed in the response to comment 1, the lookback period was limited in the original NSR reform rules because of a number of Virginia-specific concerns. One of those concerns was the lack of data on which EPA based the revisions. Although most of the regulatory provisions were indeed upheld, the court also concluded that the data on which EPA relied was inadequate. The court, therefore, upheld the remaining NSR reform provisions: even though the basis for the provisions was faulty, the agency was not held liable for choosing to promulgate those provisions. However, the concern at the state level--where the rules must be implemented--was not whether EPA acted in a legally proper way or not, but rather whether the information on which EPA's rules are based was adequate. Since that time, experience with the program has demonstrated that the 10-year lookback is reasonable, and should be implemented according to EPA's requirements.

6. **SUBJECT:** Different lookback periods for different pollutants.

COMMENTER: Georgia-Pacific

TEXT: There does not appear to be any compelling reason for Virginia's departure from the federal approach. Requiring the same baseline for all regulated pollutants appears to be based on the assumption that emissions are dependent solely on a facility's production rate such that all pollutant emission rates rise or fall together as production rises or falls. In fact, emission rates can be affected by a number of factors, including changes in raw materials or fuels that are allowed by permit and are independent of production rate changes.

RESPONSE: As discussed in the response to comment 2, the department's original concerns about different lookback periods resulting in unacceptable emission increases have been allayed, and different lookback periods for different pollutants should be allowed.

7. **SUBJECT:** PAL duration.

COMMENTER: Georgia-Pacific

TEXT: The permitting process, recordkeeping and reporting requirements for PALs are very elaborate. and impose considerable burdens on a facility. However, there may be benefits to a facility since compliance with a PAL may eliminate major recurring NSR permitting and provide needed certainty to the facility owner over the duration of the PAL.

A shorter PAL duration does not afford the permittee the business certainty necessary to justify undertaking and operating under a PAL. Given this initial resource investment, limiting the PAL period to 5 years serves as a disincentive to manufacturing facilities to apply for such a permit.

RESPONSE: As discussed in the response to comment 3, PALs are protective of air quality, and allowing a 10-year PAL effective period may encourage sources to seek PALs.

8. **SUBJECT:** Replacement units.

COMMENTER: Georgia-Pacific

TEXT: Given that replacement units replace similar units with a record of historical operational data, a projection of future actual emissions is a reliable basis for permitting, and any requirement for an up-front emissions cap based on PTE is unnecessary and overly burdensome.

RESPONSE: As discussed in the response to comment 4, we agree that this clarification is appropriate.

9. **SUBJECT:** Virginia-specific NSR rules.

COMMENTER: Honeywell

TEXT: In Honeywell, and likely in other companies as well, costs and project timing are almost always issues in determining where a new production facility or new production capabilities at existing facilities will be located. Permitting burdens are frequently a significant factor in determining both the costs, and almost as significantly, the timing of constructing (and therefore beginning operation of) new equipment or facilities. Air permitting restrictions can therefore create a significant hurdle, and in some cases become a deterrent, to a company considering expansion.

As Table 1 to the VMA petition shows, other states neighboring Virginia have largely adopted the specific federal NSR provisions which the VMA advocates.

Having the major NSR permitting regulations in Virginia more stringent in several ways than the corresponding regulations in other states puts Virginia at a competitive disadvantage to other states, including neighboring states. One possible result of the more stringent NSR permitting regulations in Virginia is that a project being considered for location in Virginia or in another state (particularly states neighboring Virginia) might require a major air permit in Virginia but only a minor air permit in another state. This would significantly delay the permitting process, extend the project timeline, and increase the cost of placing the project in Virginia compared to building the new facility or locating the expansion project in another state.

RESPONSE: As discussed elsewhere, experience with the program has demonstrated that the 10-year lookback is reasonable, and should be implemented according to EPA's requirements.

10. **SUBJECT:** PAL duration.

COMMENTER: Honeywell

TEXT: The 5-year limitation is a significant disincentive to obtaining a PAL. Should the duration be increased to match the 10-year period in the federal rules, obtaining a PAL permit might be a more attractive permitting option for existing permitted facilities in Virginia, including those owned by Honeywell.

RESPONSE: As discussed elsewhere, we agree that the implementation of PALs should be encouraged, and that extending the PAL effective period may result in more sources considering this option.

11. **SUBJECT:** Minor air permits.

COMMENTER: Honeywell

TEXT: It should also be noted that almost all projects being contemplated at larger production sites would still be required to obtain a minor air permit from Virginia even if the rule changes should result in such changes that currently would require a major permit no longer requiring a major permit. Virginia's minor air permitting regulations requires BACT analysis (i.e., controls) even for minor permits. Therefore even should a change or expansion at a site not require a major permit, the change would still be protective of the environment because it would still require a minor air permit.

RESPONSE: The commenter's observation is well taken.

12. **SUBJECT:** General benefits.

COMMENTER: Honeywell

TEXT: Making the changes requested in the petition, in addition to reducing the delays and uncertainties for industry, would reduce the workload of an already overburdened Virginia DEQ air permitting staff.

RESPONSE: Based on the experience of the past several years, we agree that the changes may result in streamlining the permitting process.

13. **SUBJECT:** Five-year lookback vs. 10-year lookback.

COMMENTER: MeadWestvaco

TEXT: The past five years have been extremely difficult for manufacturing as a result of the economy. This has resulted in a longer than normal business cycle and overall production rates have been lower than they were during prior periods. In addition, this period has been longer than other business cycles. Now that the economy is showing signs of recovery, manufacturing will have greater opportunity to grow.

As structured the current regulations will, however, dampen this growth. The first and third provisions of VMA's petition focus on the current Virginia 5-year lookback period as opposed to the federal 10-year lookback period. The longer lookback period allows businesses and DEQ to have greater flexibility in how production rates and emission rates more naturally change over time. The 5-year lookback period will penalize businesses due to the overall economy and not necessarily to a specific business cycle. A 10-year lookback will allow businesses to compare past actual emissions to whatever future changes might be subject to a permitting assessment more accurately. MWV believes that this will give businesses more flexibility as well as simplifying permitting for DEQ.

MWV obtained a permit during this period, and had a 10-year look back period been in place, it would have resulted in a much simpler review for DEQ and a less complicated permit. Using the shorter 5-year lookback with a period of slower production, the emissions of one particular pollutant showed an increase of emissions and the project was nearly considered a major modification. Using the more realistic 10-year lookback which would include more normal production levels, the project evaluation would have shown an overall decrease in emissions.

RESPONSE: As discussed elsewhere, experience with the program has demonstrated that the 10-year lookback is reasonable, and should be implemented according to EPA's requirements.

14. **SUBJECT:** Replacement unit.

COMMENTER: MeadWestvaco

TEXT: MWV believes that use of replacement units will allow for simpler permitting without negative effects on emissions. The current methodology requires that the emissions from a new unit be compared to significance levels. If those levels are exceeded then a facility must consider any other affected units and emissions increases and decreases over the look back period. With respect to a replacement unit in reality, a new unit retiring an older unit will often result in the same or lower emissions. However, the current methodology creates unnecessary permitting efforts due to the described emission accounting exercise without a benefit to the environment. Adoption of the replacement unit provision will allow a facility to compare emissions from the new unit with the emissions of the unit to be retired within the same step.

RESPONSE: As discussed in the response to comment 4, we agree that this clarification is appropriate.

15. **SUBJECT:** Lookback period.

COMMENTER: Volvo Group North America

TEXT: The Volvo Group has a special interest in amending the definition of "baseline actual emissions" to conform to the federal definition.

A major reason that EPA extended the lookback period in the federal regulations was the agency's acknowledgment that a source's production activity and associated emissions generally will fluctuate as a result of normal fluctuations in market conditions during a business cycle. The agency understood a common industry complaint that a plant's capacity was frequently expected to be surrendered under the original approach that applied only a 2-year look back. Thus, in 1997 EPA contracted a study of business cycles for various major source categories subject to the PSD program and found that a 10-year look-back period would assure that the normal business cycle generally would be captured for any industry. With that extended look back period, EPA sought to provide a source owner or operator with a greater ability to preserve a unit's historical operating levels and associated emissions. (See EPA's Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations, I-2-2 and I-2-5, Nov. 2002.)

Virginia's current 5-year look back period adversely affects Volvo Group in the manner which EPA's 10-year look back period sought to avoid. The plant, which is now considering an expansion in the paint shop, would be handicapped by the low production rates experienced in the Great Recession during the past 5 years and the subsequent slow recovery of the marketplace for heavy trucks.

A 10-year business cycle is more representative of the heavy truck manufacturing industry. However, major financial events, such as the Great Recession, can manifest a business cycle that exceeds the typical truck manufacturing business cycle. Consequently, at this time production levels for the plant are not projected to match the high levels of 2005 and 2006 for several more years or until the end of the decade.

To demonstrate the impact of a 5-year lookback period upon a capital investment decision, the Volvo Group would have been required to submit a complete major NSR application by December 2009. Completion by this date would have allowed the inclusion of emission rates during the plant's high production years as part of the baseline calculation. However, this application would have had to be submitted at the depths of the Great Recession, a time

when the industry was trying to survive the greatest economic collapse since the Great Depression rather than a time when the industry expected continuing economic growth. On the other hand, with a 10-year lookback period, the plant's high production rates of 2005 and 2006 can still be considered at this time.

RESPONSE: As discussed elsewhere, experience with the program has demonstrated that the 10-year lookback is reasonable, and should be implemented according to EPA's requirements.

15. **SUBJECT:**

COMMENTER: RockTenn CP, LLC

TEXT: It is imperative that RockTenn's facilities that are major sources (or that may become major sources) have the flexibility to construct new units and modify existing equipment and processes in a timely manner to achieve production objectives and meet customer demands. As set forth in more detail in the VMA Petition, Virginia DEQ's major new NSR regulations are more stringent than the comparable federal requirements in many respects. Unless this issue is addressed, Virginia manufacturers like RockTenn are likely to find themselves at a competitive disadvantage with facilities in other states where construction and modification projects can be permitted in a more streamlined and expeditious manner.

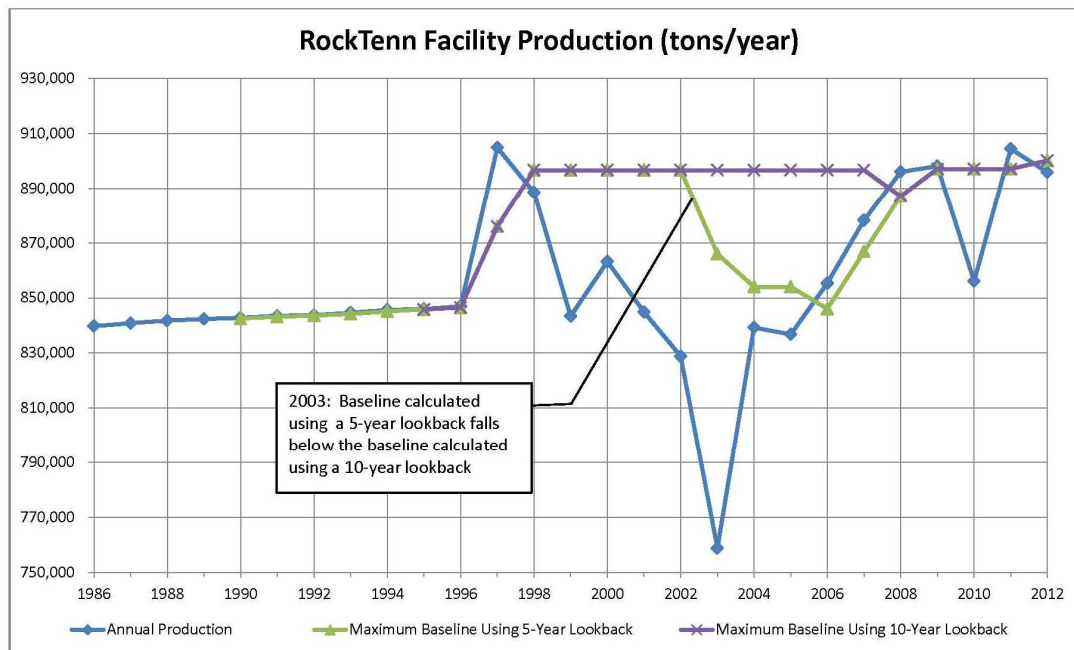
RESPONSE: As discussed in the response to comment 1, Virginia's NSR regulations were tailored to meet specific Virginia needs. Since then, those needs and the state of Virginia's air quality have evolved, and we agree that a review of these provisions is appropriate.

17. **SUBJECT:** Use of a 10-year baseline lookback period instead of 5-years.

COMMENTER: RockTenn CP, LLC

TEXT: The use of only a 5-year baseline lookback can result in the confiscation of a facility's productive capacity since many facilities encounter business cycles that last longer than 5 years, and facility production is often proportional to facility emissions.

The following graph shows the historic production data for one of RockTenn's major source facilities. It illustrates that the use of a 5-year lookback period would result in a lower baseline than a 10-year lookback for the five years from 2003-2007.



Projects undertaken during or closely following a down business cycle using a 5-year lookback for the baseline emissions can trigger major NSR permit applicability and stricter environmental requirements than the same project would trigger if it were undertaken several years earlier or later. This puts Virginia businesses at a competitive disadvantage compared to those that operate where the air permitting lookback period allows for a full business cycle of up to 10 years.

RockTenn recognizes that the current Virginia regulations allow a facility to use a baseline lookback period longer than 5 years if the board determines it is more representative of normal operation. Although this provision is available, it is generally not useful, as it provides no certainty for project planning purposes and adds time to a project. In order to fit within business capital and project planning cycles, our facilities have always utilized the 5-year lookback in order to avoid the uncertainty of gaining approval for a different lookback period and the time that it would require to obtain that approval.

RESPONSE: As discussed elsewhere, experience with the program has demonstrated that the 10-year lookback is reasonable, and should be implemented according to EPA's requirements.

18. **SUBJECT:** Use of a different baseline for each pollutant.

COMMENTER: RockTenn CP, LLC

TEXT: As we state elsewhere, emissions from a facility are often proportional to production. However, there are many factors other than production that can influence emissions, and those factors do not influence all pollutants equally. For example, at our major source facilities, the boilers providing steam to the pulp and papermaking processes are equipped to burn several different fuels including biomass, coal, fuel oil, and natural gas. Fuel choice—which is based on availability and cost—has a very large impact on emissions independent of facility production rates. Although lower production rates will result in lower fuel use and therefore lower emissions, the use of different fuels at the same production rate will produce different emission profiles (lower or higher for different pollutants depending on the specific fuels used). Additionally, the sulfur content of the fuels burned impacts SO₂ emissions independent of any other variable.

Another factor that influences the amount and type emissions from our pulp and paper mills independently of production rate is the particular product being made and the fiber type required for that product. Paper made with virgin fiber requires operation of the Kraft pulp mill equipment, paper made with recycled fiber requires the operation of the recycled fiber plant equipment, and paper made with bleached white pulp requires operation of the bleach plant equipment. The equipment used to produce each of these three types of fiber emits different types of pollutants in different amounts. Thus, even at the same production rate, the emissions related to making paper from each type of fiber will be different in amount and type. By requiring the same baseline period to be used for each pollutant, facilities are often faced with determining which baseline period should be used in order to minimize the cost of the environmental requirements associated with the project and the time necessary to obtain a permit. Allowing different baseline periods to be used for different pollutants would alleviate this need for facilities to evaluate the project consequences, costs, and permitting requirements for multiple baseline periods within the baseline look-back period.

RESPONSE: As discussed elsewhere, the department's original concerns about different lookback periods resulting in unacceptable emission increases have been allayed, and different lookback periods for different pollutants should be allowed.

19. **SUBJECT:** Use of a 10-year duration for PAL permits instead of a 5-year duration.

COMMENTER: RockTenn CP, LLC

TEXT: The permitting process and the recordkeeping, and reporting process associated with a PAL are very elaborate and impose considerable burdens on the facility. Upon renewal of a PAL, the emissions cap(s) must be re-evaluated and are likely to be decreased, which could result in significant cost to the facility.

The business certainty and other benefits provided by a 10-year PAL is worth the burden associated with obtaining, complying with and renewing the PAL for some facilities. In fact, one of RockTenn's facilities in South Carolina recently obtained a 10-year PAL for SO₂. However, it is unlikely that a facility would find the benefits associated with a 5-year PAL to be worth the burden and risk associated with obtaining and renewing it.

RESPONSE: As discussed elsewhere, we agree that the implementation of PALs should be encouraged, and that extending the PAL effective period may result in more sources considering this option.

20. **SUBJECT:** Treating replacement units as existing units.

COMMENTER: RockTenn CP, LLC

TEXT: The current major NSR regulations in Virginia treat replacement units as new emissions units for applicability purposes, meaning that when determining whether a significant emission increase is caused by the replacement of a unit, the baseline emission rate is assumed to be zero and its future emissions are assumed to be its potential to emit (PTE). The PTE of a replacement unit is thus equal to its associated emission increase. The corresponding federal requirements and those in many other states specify that the baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit be used in determining whether a significant emissions increase would occur as a result of the unit replacement (i.e., a replacement unit is treated as an existing emissions units for purposes of major NSR applicability).

At a major facility such as a pulp and paper mill, a number of emission units emit one or more pollutants at a rate greater than the major NSR significant increase levels. As such, replacement of one of these units in Virginia would trigger major NSR permitting requirements and all the costs and burdens associated with those requirements. However, that same replacement made in a state that adopted EPA's replacement provisions of 2003 would very likely NOT trigger the major NSR provisions because the emissions increase would be determined in that other state based on the difference between the emissions of the replaced unit and the replacement unit instead of the total emissions from the replacement unit. Because of the cost and other burdens associated with major NSR permitting requirements, that facility replacing a unit in Virginia would be at a competitive disadvantage when compared to facilities in other states.

RESPONSE: As discussed elsewhere, we agree that this clarification is appropriate.

21. **SUBJECT:** General support.

COMMENTER: American Electric Power (AEP)

TEXT: The requested changes will provide the regulated community the same flexibility within the federal rules by allowing for a 10-year lookback period and allowing using different lookback periods for different regulated NSR pollutants when determining baseline actual emissions. In addition, allowing PALs for a 10-year period instead of 5 years provides more certainty to the regulated facility that is making investments to process equipment. We support these enhancements to the Virginia rules.

RESPONSE: As discussed elsewhere, we agree that these amendments are appropriate.

21. **SUBJECT:** Production limits.

COMMENTER: Celanese

TEXT: Celanese evaluates future expansion projects and potential project locations based on a variety of factors. These include ease of environmental permitting and restrictions on the capacity of permitted equipment. In past years, our Celco facility has accepted federally-enforced limitations on capacity in order to avoid the burden of federal PSD permitting. It has been our experience that such limitations alone restrict manufacturing capacity without significant environmental benefit. The modifications requested in VMA's petition would not have resulted in the selection of more stringent control technology nor would it have significantly reduced emissions to the environment. The primary result was an artificial limit on production.

RESPONSE: The commenter's discussion about production is well taken.

22. **SUBJECT:** Ten-year lookback period.

COMMENTER: Celanese

TEXT: Virginia's lookback period of 5 years is unnecessarily restrictive, and business and market cycles, such as the one we are in now, often last for more than 5 years. As you may know, capacity restrictions are often governed by the baseline actual emissions rate. It is important to give Virginia industry the full benefit of a 10-year lookback, which is afforded to our competitors in other states.

RESPONSE: As discussed elsewhere, we agree that these amendments are appropriate.

23. **SUBJECT:** Replacement unit definition.

COMMENTER: Celanese

TEXT: Incorporating emissions from equipment being replaced into the calculation of the baseline actual emissions rate results in calculation of a more representative and reasonable baseline actual emissions rate. After all, these emissions were generated by equipment serving the same function. Use of a more representative and reasonable baseline also eases capacity restrictions taken to avoid the burden of obtaining a federal permit. This proposal has the added benefit to incentivize replacement of aging equipment with state-of-the-art control technologies that further reduce our emission contributions.

RESPONSE: As discussed elsewhere, we agree that these amendments are appropriate.

24. **SUBJECT:** Manufacturing workforce in southwest Virginia.

COMMENTER: Celanese

TEXT: The manufacturing workforce in southwest Virginia is supported by large plants like Celco. Maintaining environmental regulation that is no more stringent than neighboring states and the federal regulations allows for Virginia to retain a skilled workforce and tax revenue.

RESPONSE: The commenter's observation is well taken.

High Priority Violators (HPV's) - First Quarter, 2014

NOV's Issued from October through December 2013

NRO	Kinder Morgan Newington Terminal #1 Newington, Virginia Registration No. 70087 SIC 5171 Petroleum Bulk Stations and Terminals NAICS 424710 Petroleum Bulk Stations	Discovery Date: 7/24/2013 Alleged Violation: Failure to certify Continuous Emissions Monitoring System (CEMS) for Vapor Recovery Unit.	NOV – Issued 10/25/2013
SWRO	Saltville Gas Storage Company LLC Saltville, Virginia Registration No. 11237 SIC 4922 Natural Gas Transmission NAICS 486210 Pipeline Transportation of Natural Gas	Discovery Date: 10/3/2013 Alleged Violations: Failed stack test, exceeded VOC limit for natural gas dehydration unit and glycol regenerators.	NOV – Issued 12/9/2013
VRO	O-N Minerals (Chemstone) Corporation Strasburg, Virginia Registration No. 80252 SIC 3274 Lime Manufacturing NAICS 327410 Nonmetallic Mineral Product Manufacturing	Discovery Date: 8/6/2013 Alleged Violation: Failed stack test for PM emissions limit.	NOV – Issued 10/22/2013

CO's Issued from October through December 2013

NONE

CO's In Development – Previously Reported NOV's

BRRO	Radford Army Ammunition Plant Radford, Virginia Registration No. 20656 SIC 2892 Industrial/Explosives	Discovery date: 4/17/2013 Alleged violations: Construction and operation of 3 unpermitted 300 HP diesel engines/pumps. 2 engines installed and in continuous operation since April 2011. Third engine added	NOV – Issued 5/3/2013 Continuing to negotiate consent decree language with U.S. Army.
------	--	---	--

	NAICS 325920 Explosives Manufacturing	March 2013. Failure to maintain written documentation of once per shift inspections for absorption tower for Nitric Acid Concentrator/ Sulfuric Acid Concentrator from July through December 2012.	
NRO	Kinder Morgan Newington Terminal #1 Newington, Virginia Registration No. 70087 SIC 5171 Petroleum Bulk Stations and Terminals NAICS 424710 Petroleum Bulk Stations	Discovery Date: 7/24/2013 Alleged Violations: Failure to submit performance evaluation testing report and failure to certify Continuous Emissions Monitoring System (CEMS) for Vapor Recovery Unit.	NOVs – Issued 8/15/2013, 10/25/2013
PRO	James River Genco Hopewell, Virginia Registration No. 50950 SIC 4911 Electric Services NAICS 221112 Fossil Fuel Electric Power Generation	Discovery Date: 5/22/2013 Alleged Violations: Failed stack test for high load filterable PM10 emissions for Units 1A, 1B and 1C.	NOV – Issued 8/16/2013
SWRO	Virginia City Hybrid Energy Center Wise County, Virginia Registration No. 11526 SIC 4911 Electric Services NAICS 221119 Electric Power Generation	Discovery date: 4/8/2013 Alleged violations: Exceeded CO limit for 30 day rolling average variable permit limit for CFB Units 1 and 2.	NOVs – Issued 4/10/2013, 9/30/2013 EPA currently considering Dominion’s request for a diluents cap.

EPA CD’s In Development – Previously Reported NOV’s

<i>**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.</i>			
**EPA	Hopewell Regional Wastewater Treatment Facility (WWTP) Hopewell, Virginia Hopewell City	Discovery dates – 11/07/2007 Alleged violations: Violations of 40 CFR 63 Subpart VVV (Publically Owned Treatment Works - POTW) and Reasonably Available	EPA 1st NOV - Issued 07/06/2009 EPA 2nd NOV - Issued 12/17/2010 Additional Information: NOV Meeting was held with EPA, DEQ, and the Responsible Party on

<p>DEQ - PRO</p>	<p>Registration No. 50735 SIC 4952 Sewage Systems NAICS 221320 Utilities, Water, Sewage and Other Systems</p>	<p>Control Technology (RACT) that include failure to provide appropriate notification, meet control requirements, conduct inspections and monitoring, properly calculate emission values.</p> <hr/> <p>Discovery dates: 02/04/2011</p> <p>Alleged violations: Failure to meet 92% HAP mass removal present in wastewater.</p>	<p>9/23/2009, 03/09/2011 and 8/7/2012. Draft Consent Decree provided to WWTP 12/13/2013. Negotiations continue.</p> <hr/> <p>NOV - Issued 05/25/2011</p> <p>Additional Information: This NOV cites the same violations as the EPA NOV issued on 12/17/2010.</p>
<p>**EPA</p>	<p>Smurfit-Stone Container Corp. / Hopewell Mill (RockTenn) Hopewell, Virginia Registration No. 50370 SIC 2631 Pulp Mills NAICS 322130 Pulp, Paper, and Paperboard Products</p>	<p>Discovery dates – 07/27/2010</p> <p>Alleged violations: Failure to operate in a manner to demonstrate compliance with HAP reduction requirements.</p> <p>Failure to submit periodic startup, shutdown and malfunction reports.</p>	<p>NOV - Issued 09/27/2010</p> <p>Additional Information: NOV meetings were held with EPA, DEQ, and the Responsible Party on 01/31/2011 and 8/7/2012. RP submitted requested information to EPA/DEQ September 2012. DEQ received draft CD 2/11/2013, comments provided to EPA/DOJ, discussions to follow soon. Negotiations continue.</p>