

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
WEDNESDAY, SEPTEMBER 29, 2004

HOUSE ROOM D, GENERAL ASSEMBLY BUILDING
9TH & BROAD STREETS
RICHMOND, VIRGINIA

Board Members Present: Richard D. Langford - Chairman
 Karlynn W. Bucher - Vice-Chairman
 Vivian Thomson
 Smita Siddhanti
 John N. Hanson

Department of Environmental Quality
Staff: Richard F. Weeks, Deputy Director
 Cindy M. Berndt

Attorney General's Office: Carl Josephson

- 1) The following minutes summarize activities, which took place at this Board meeting.
- 2) The meeting was convened at 1:03 p.m. and adjourned at 3:40 p.m.

Minute No. 1 - Election of Chairman: The Board, on a motion by Ms. Bucher, elected Richard D. Langford as Chairman.

Minute No. 2 - Minor New Source Review (Revision K04): Mr. Robert A Mann, Director, Office of Air Regulatory Development, presented amendments to the minor new source review program. Mr. Mann briefed the Board on the history of a major revision to the minor NSR program that became effective on September 1, 2002. Mr. Mann explained that implementing the 2002 amendments had placed a significant burden upon the Department staff. Under the new regulation, determination of permit and BACT applicability cannot be made with any reasonable degree of efficiency, effectiveness or consistency. Interpreting the new regulation is a major time-consuming workload for the Department. Further, he advised the Board that the regulation needed to be revised and the simplest and preferred course of action is to eliminate the netting concept and return the regulation to its previous applicability and BACT determination structure that is currently in the EPA-approved SIP.

Mr. Mann explained that the substantive change to the program is converting from a permit applicability approach that looks at the changes from a source wide perspective to determine applicability to an approach which looks at each physical or operational change to the source individually to determine applicability. Currently applicability is based on the net emissions increase in actual emissions based on all the source wide emissions changes directly resultant from the physical or operational change. The revised program would base permit applicability on the uncontrolled

emissions from each individual physical or operational change to the source. The provisions covering permits for sources subject to the federal hazardous air pollutant new source review program have been restructured to increase clarity. Finally, a number of other provisions have been rewritten to increase clarity.

Decision: Based on the Board book material, staff presentation and Board discussions, the Board, on a motion by Ms. Bucher, voted 4 to 1 (Ms. Thomson voted no) to:

1. authorize the Department to promulgate the proposal, with amendments presented at the meeting, for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act, with the understanding that the Board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. authorize the Department to set an effective date 30 days after close of the 60-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

3. authorize the Director to make the decision under 9 VAC 5-170-100 C concerning the use of the participatory approach or alternatives, should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed.

Minute No. 3 - Ozone Transport Region New Source Review (Revision G04): Ms. Karen G. Sabasteanski, Office of Air Regulatory Development, presented amendments to the ozone transport region new source review regulations. Ms. Sabasteanski explained that the U.S. Environmental Protection Agency (EPA) had added a new subpart X to 40 CFR Part 51 as part of the implementation of the 8-hour ozone standard. This section requires that if an area is designated attainment or unclassifiable but is located in an Ozone Transport Region (OTR), the state implementation plan (SIP) must include provisions to implement the requirements of §§ 172(c) and 173 of the federal Clean Air Act as if the area were classified as moderate nonattainment for the 8-hour ozone standard.

Ms. Sabasteanski briefed the Board on the specific amendments to the regulation, including (i) the addition of language to indicate that sources in the Ozone Transport Region are subject to Article 9 and that areas located in the OTR are subject regardless of their nonattainment status and (ii) amending the definition of major stationary source to include sources which emit or have the potential to emit 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the OTR.

Decision: Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Thomson, unanimously:

1. Adopted the proposal, with an effective date of December 1, 2004.

2. Affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

3. Authorized the amendments to be submitted to EPA as a State Implementation Plan Revision.

Minute No. 4 - Permit Application Fees (Revision L04): Mr. Gary Graham, Office of Air Program Development, presented amendments to the regulations for the control and abatement of air pollution concerning permit application fees. Mr. Graham advised the Board that there was a technical error in the recently adopted regulations requiring permit application fees from applicants for a permit for a new major stationary source. The error would require permit application fees from applicants for a permit to expand certain major stationary sources. He explained that the Department believed that such an interpretation of the new regulation is beyond the intent of the law and is inconsistent with the rest of the regulation. Mr. Graham explained that the only amendment necessary to correct this error would be the addition of “at an undeveloped site” in subdivision 9 VAC 5-80-2250 A 1 b of Chapter 80, Article 10.

Decision: The Board, based on the Board book material, staff presentation and Board discussion, on a motion made by Ms. Bucher, unanimously adopted the amendments, with an effective date of December 1, 2004, and affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Minute No. 5 – Public Forum: No one appeared during the public forum.

Minute No. 6 - Report on High Priority Violators (HPVS) for the First Quarter, 2004: Mr. Michael A. Dowd, Division of Enforcement Coordination, presented a report to the Board on a recently announced settlement that had been negotiated with Mirant. In addition, he answered questions on the high priority violators report for the second quarter of 2004 that had been included in the Board book.

Minute No. 7 - Report on Air Quality Program Activities: Mr. John M. Daniel, Jr. gave a report on air program activities.

Minute No. 8 – Minutes: The Board on a motion by Ms. Bucher approved, with an amendment to Minute 11 (include the actual offset ratio in the next last to sentence of the minute), the minutes of the June 29, 2004.

Minute No. 9 - Report - International Paper Innovations Project - Pulp Mill (City of Franklin): The Board received a report from representatives of International Paper on an innovations project underway at the pulp mill in Franklin.

Cindy M. Berndt, Director
Regulatory Affairs