

**TENTATIVE AGENDA AND MINIBOOK
STATE AIR POLLUTION CONTROL BOARD MEETING
MONDAY, SEPTEMBER 26, 2006**

**DEPARTMENT OF ENVIRONMENTAL QUALITY
629 EAST MAIN STREET
RICHMOND, VA**

Convene – 10:00 A.M.

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I. Regulations

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Tour of the Chesterfield Power Station		

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 arising as to the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for their consideration.

For **REGULATORY ACTIONS (adoption, amendment or repeal of regulations)**, public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period and one public meeting) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period and one public hearing). Notice of these comment periods is announced in the Virginia Register and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS (issuance and amendment of permits and consent special orders)**, the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. If a public hearing is held, there is a 45-day comment period and one public hearing.

In light of these established procedures, the Board accepts public comment on regulatory actions, as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for **final** adoption. At that time, those persons who participated in the prior proceeding on the proposal (i.e., those who attended the public hearing or commented during the public comment period) are allowed up to 3 minutes to respond to the summary of the prior proceeding presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of this permit. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then, in accordance with § 2.2-4021, allow others who participated in the prior proceeding (i.e., those who attended the public hearing or commented during the public comment period) up to 3 minutes to exercise their right to respond to the summary of the prior proceeding presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

Pooling Minutes: Those persons who participated in the prior proceeding and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes or 15 minutes, whichever is less.

NEW INFORMATION will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in **rare** instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who participated during the prior public comment period **shall** submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. For a regulatory action should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than pending regulatory actions or pending case decisions. Anyone wishing to speak to the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentation to not exceed 3 minutes.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, Virginia 23240, phone (804) 698-4378; fax (804) 698-4346; e-mail: cumberndt@deq.virginia.gov.

Federal Documents Incorporated by Reference (9 VAC 5 Chapters 50 and 60, Rev. I05) - Request for Board Action: The purpose of the proposed action is to amend the regulations to incorporate newly promulgated federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and national emission standards for hazardous air pollutants for source categories (Maximum Achievable Control Technology, or MACT), Rules 5-5, 6-1, and Rule 6-2, respectively, of the board's regulations. The board must incorporate newly promulgated NSPS, NESHAP, and MACT standards in order for the department to obtain authority from the U.S. Environmental Protection Agency (EPA) to enforce these standards. If the board does not do so, authority to enforce the standards remains with the federal government. Further, the standards reflect the most current technical research on the subjects addressed by the standards. To continue to follow the old standards would mean relying on inaccurate and outdated information. The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2005. Below is a list of the new standards the department is recommending be incorporated into the state regulations by reference:

1. No new NSPS are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
2. No new NESHAP are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
3. Incorporation of MACTs as follows:
 - a. Subpart DDDD - Plywood and Composite Wood Products (40 CFR 63.2230 through 63.2292).
 - b. Subpart DDDDD - Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR 63.7480 through 63.7575).

In addition, Subpart C (list of hazardous air pollutants, petitions process, lesser quantity designations, and source category list) has been revised to include the deletion of ethylene glycol monobutyl ether at 40 CFR 63.63.

Minor New Source Review (9 VAC 5 Chapter 80, Rev. K04) - Public Participation Report and Request for Board Action: At the September 2004 meeting, the Board authorized the Department to promulgate for public comment a proposed regulation revision (K04) concerning the minor new source review (MNSR) program. The Board also authorized the Department to promulgate the proposal for public comment using the fast-track rulemaking process established in § 2.2-4012.1 of the Administrative Process Act. To solicit comment from the public on the use of the fast-track process and the proposal, the Department issued a notice that provided for receiving comments during a comment period and at a public hearing. In response to that notice, comments were submitted that indicated the likelihood that a number of sources would request changes to the permits issued under the 2002 MNSR regulation. If the regulatory action becomes effective, the requests for permit changes will undercut many of the environmental gains of the 2002 MNSR regulation and there will be an adverse environmental impact that had not been anticipated when the Board originally approved this regulatory action. In consideration of the issues that surfaced as a result of the comments, the Department suspended the effective date of the regulatory action on behalf of the Board pending a reconsideration of the proposal. The Department is providing this information so that the Board will have the opportunity to review it and reconsider the proposal. The Department plans to present its recommendation at the meeting. Should Rev. K04 become effective, some of the permit and BACT applicability provisions that necessitated the imposition of terms and conditions on certain emissions units under the 2002 MNSR regulation will no longer be applicable. The affected units are primarily those units that did

not undergo a physical or operational change but were subject to permit or BACT applicability because the units experienced an emissions change that was concurrent with and directly resultant from the physical or operational change at another unit that made up the project. In most cases, these units would not be subject to permit or BACT applicability if Rev. K04 becomes effective. During the public comment period on Rev. K04, the Department received a comment letter from a law firm that contained the prerequisite objections from 10 persons that would have necessitated that the fast track process be terminated and the regulatory action be continued under the normal regulation adoption process. This did not happen because the objections were withdrawn in a subsequent letter. The comment letter also contained a request to amend the regulation to allow those sources that did not benefit from the implementation of the 2002 MNSR regulation to remove those terms and conditions that were placed on those units that did not undergo a physical or operational change but were subject to permit or BACT applicability. It appears that the motivation behind the withdrawal letter, as is clear in the text of the letter, is to achieve the same objective put forth in the comment letter by use of the minor permit procedures, specifically 9 VAC 5-80-1280 C (see below). The intent is to have these terms and conditions removed without any analysis or assessment of the environmental impact. If Rev. K04 becomes effective, the Department will likely be inundated with many requests to remove the permit terms and conditions in permits issued under the 2002 MNSR regulation. The first such request has already been submitted. Should a request be denied, litigation is likely in some cases. Thus, much of the environmental benefit of many of the permits issued under the 2002 MNSR regulation would be lost.

9 VAC 5-80-1280 C:

Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

Report on Air Quality Program Activities: A summary of the significant activities related to the Air Quality Program will be presented.

Minutes: The minutes from the June 22, 2005 meeting will be presented for approval.

HIGH PRIORITY VIOLATORS (HPVs) FOR THE SECOND QUARTER, 2005

ACTIVE CASES — Table A *			
DEQ Region	Facility Name and location	Brief Description	Status
NRO	Motiva Enterprises, LLC, Fairfax Terminal (petroleum liquid storage and distribution facility)	Alleged exceedances of VOC emission limits contained in Title V permit on approximately 146 days; failure to maintain data related to CEM maintenance, tank throughput, tank inspections, and tank vapor pressure readings; failure to maintain and repair	NOV issued 5/26/05; pending

		emissions control equipment and other alleged violations of facility's Title V permit	
NRO	Potomac River Generating Station/Mirant, Alexandria (coal-fired electric power plant)	Alleged exceedance of ozone season NOx emission limit of 1,019 tons contained in state operating permit by over 1,000 tons	NOV issued 9/10/03; revised NOV issued 10/20/03; NOV issued by EPA 1/22/04; Consent Decree lodged with U.S. District Court in Alexandria 9/27/04 calling for ozone season NOx emission limits on Potomac River; Mirant system-wide ozone season NOx limits; .15 lbs/MMBtu system-wide ozone season NOx emission rate starting in 2008; system-wide annual NOx limits; \$1mil in coal yard dust/particulate projects at Potomac River; payment of \$500K civil fine
PRO	Carry-On Trailer Corporation, Callao, Northumberland County (trailer manufacturer)	Alleged exceedances of emissions limits and throughput limits for ethylbenzene, xylene, and 2-bytoxyethanol in violation of permit requirements; unpermitted modification of paint composition	NOV issued 4/13/04; pending
PRO	J.W. Ferguson and Sons, Inc. Richmond (rotogravure printing facility)	Alleged failure to certify and conduct relative accuracy audits on new monitors; failure to demonstrate 95% emission reduction efficiency; failure to maintain monitoring equipment; failure to properly train personnel in violation of facility's Title V permit and certain MACT requirements	NOV issued 5/31/05; pending

PRO	Pre Con, Inc., Petersburg (polyolefin fiber laminates manufacturer)	Alleged failure to install and maintain air pollution control equipment; failure to conduct initial performance test within prescribed time; failure to submit certain reports required under Title V permit and NSPS regulations	NOV issued 5/21/05; pending
PRO	Virginia State University, Petersburg (educational institution)	Alleged failure to stack test boiler; failure to install, maintain, and operate continuous opacity monitors; failure to perform visual opacity inspections; various recordkeeping violations	NOV issued 5/28/04; pending
SCRO	Intermet Archer Creek Foundry, Campbell County (ductile iron castings manufacturer)	Alleged exceedances of opacity limits at cupola amrex baghouse (5% limit – 12.7% observed) and at ETA baghouse (20% limit – 33.54% observed)	NOV issued 7/19/04; pending
SWRO	Galax Energy Concepts, LLC Galax, Carroll County (wood burning power plant)	Alleged violations of lbs/hr and lb/mmBtu emission limits for particulate matter for the facility's 3 boilers resulting from stack tests performed in March '05 under low-load and high-load conditions; exceedances ranged from 15% over the limit to 245% over the limit	NOV issued 4/18/05; pending
VRO	Merck & Co., Inc., Rockingham County (pharmaceutical manufacturer)	Alleged exceedance of emission limit for methyl chloride in synthetic minor HAP permit by over 4.5 tons; failure to adequately measure wastewater influent for HAPs as required by permit	NOV issued 12/11/03; Consent Order dated 7/8/ imposed various injunctive measures to control toxics emissions and a civil fine of \$500,000, of which \$300,000 goes toward a SEP calling for retrofitting Rockingham County and Harrisonburg City school buses with control devices for particulates and other pollutants
WCRO	Magnox Pulaski Inc., Pulaski,	Numerous alleged violations of Title V permit	NOV issued 5/8/03; Consent Order dated

	Pulaski County (magnetic tape manufacturer)	recordkeeping, monitoring, and operational requirements	7/28/04 imposed civil fine of \$20,668 and requires SEP valued at no less than \$14,468 to reduce CO emissions through process changes
WCRO	Southern Finishing Co., Martinsville, Henry County (furniture manufacturer)	Alleged violations of, among other things, MACT subpart JJ work standards and recordkeeping requirements; installation of wood spray booth w/o permit; defective spray booth filters; failure to conduct periodic monitoring and inspections; failure to submit compliance certification and other required reports; failure to complete SEP required by 11/17/03 Consent Order	Dual NOVs issued 6/3/04; pending

* Table A includes the following categories of HPV cases:

- 1) Those initiated by a Notice of Violation (NOV) issued prior to or during the second quarter of 2005 that have not been settled by Consent Order, and;
- 2) Those settled by Consent Order prior to or during the second quarter of 2005 where the alleged violator has not complied with substantially all of the terms of the Consent Order.

RESOLVED CASES — Table B **			
DEQ Region	Facility Name and location	Brief Description	Status
VRO	O-N Minerals Chemstone, Clear Brook (lime kiln)	Alleged late submittal of monitoring reporting required by facility's Title V permit	NOV issued 4/19/05; Consent Order dated 6/23/05 imposed civil fine of \$720
WCRO	Chemical Lime Company, Ripplemead (lime kiln and lime product manufacturing facility)	Alleged pervasive and chronic fugitive dust emission exceedances in violation of facility's Title V permit	NOV issued 12/13/04; Consent Order dated 6/3/05 imposed civil fine of \$7,350
WCRO	Cinergy Solutions of Narrows, LLC, Narrows, Giles	Recurrent alleged exceedances of opacity limits	NOV issued 2/16/05; Consent Order dated 8/1/05 imposed a civil fine of \$1,330

	County (power plant)		
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** Table B includes HPV cases resolved by Consent Order during the second quarter of 2005 where the alleged violator has complied with substantially all of the terms of the Consent Order.