

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
MONDAY, SEPTEMBER 26, 2005

DEPARTMENT OF ENVIRONMENTAL QUALITY
629 EAST MAIN STREET
RICHMOND, VA

Board Members Present:

Richard D. Langford, Chairman
Smita Siddhanti
Hullihen W. Moore

Vivian E. Thomson, Vice-Chairman
John N. Hanson

Department of Environmental Quality:

Robert G. Burnley, Director
Cindy M. Berndt

Attorney General's Office:

Carl Josephson, Senior Assistant Attorney General

- 1) The following minutes summarize activities, which took place at this Board meeting.
- 2) The meeting was convened at 10:08 a.m. and adjourned at 12:33 p.m. after which the Board visited the Chesterfield Power Station for a tour of the facility.

Minute No. 1 – Election of Vice-Chair. The Board, on a motion by Ms. Siddhanti, unanimously elected Ms. Vivian Thomson Vice-Chair of the Board.

Minute No. 2 - Federal Documents Incorporated by Reference (9 VAC 5 Chapters 50 and 60, Rev. I05) - Request for Board Action: Mr. Robert A. Mann, Office of Air Regulatory Development, presented the final regulation to the Board. Mr. Mann explained that the purpose of the amendments to the regulations was 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. Mr. Mann advised the Board that:

1. No new NSPS were being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference was being updated to the latest version.
2. No new NESHAP were being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference was being updated to the latest version.
3. Incorporation of MACTs was 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).
4. Subpart C (list of hazardous air pollutants, petitions process, lesser quantity

designations, and source category list) was being revised to include the deletion of ethylene glycol monobutyl ether at 40 CFR 63.63.

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

1. Adopted the amendments, with an effective date of December 1, 2005.
2. Affirmed that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision.
3. Directed that the amendments be submitted to EPA in order to retain delegation of authority to enforce EPA regulations.

Minute No. 3 - Minor New Source Review (9 VAC 5 Chapter 80, Rev. K04) - Public Participation Report and Request for Board Action. Mr. Robert A. Mann, Office of Air Regulatory Development advised the Board that at the September 2004 meeting, the Board authorized the Department to promulgate for public comment a proposed regulation revision (K04), using the fast-track process, concerning the minor new source review (MNSR) program. Mr. Mann explained that in response to the notice of the fast-track rulemaking, comments were submitted that indicated the likelihood that a number of sources would request changes to the permits issued under the 2002 MNSR regulation. These requests would be submitted under 9 VAC 5-80-1280 C which reads:

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.

Mr. Mann advised the Board that the Department believed if the regulatory action became effective, the requests for permit changes would undercut many of the environmental gains of the 2002 MNSR regulation and there would be an adverse environmental impact that had not been anticipated when the Board originally approved this regulatory action. In consideration of those 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.

Ms. Sharon Foley, Air Permit Manager in the Valley Regional Office, briefed the Board on an additional issue surrounding the amendments. She explained that changing "facility" to "emission units" in the exemption section could also affect emissions.

Finally, Mr. Mann briefed the Board on the following options:

Option 1 - withdraw the regulatory action (Rev. K04) and no longer consider the proposal. If the Board chooses this option, the Department will initiate a new regulatory action that will include, among others, changes to (i) convert from a permit applicability approach which looks at the net emissions increase due to or directly resultant from the physical or operational changes from all affected units in the project back to an approach that looks at emissions changes due to physical or operational changes at emissions units to determine applicability and (ii) clarify the MNSR permit change provisions.

Option 2 - readopt the proposal, with a new effective date. If the Board chooses this course of action, the Department will develop guidance to clarify the minor NSR permit change provisions; and initiate a new regulatory action that will include, among others, changes to clarify the MNSR permit change

provisions.

Mr. John R. Cline from Troutman Sanders LLP and Mr. Thomas Knauer representing the Virginia Manufacturing Association appeared to request that the Board allow Revision K04 to become effective. In addition, Mr. Caleb Jaffe from the Southern Environmental Law Center appeared and asked the Board to withdraw the Revision K04 and give the Department an opportunity to develop a new proposal that would address the unforeseen impacts of Revision K04.

Based on the Board book material, staff and public presentations, and Board discussions, the Board, on a motion made by Ms. Thomson, unanimously adopted the staff recommendation and withdrew Revision K04. (Mr. Langford declared, in writing, that he is a retiree of a permit holder that is affected by Revision K04, but was able to participate in deciding whether to withdraw Revision K04 fairly, objectively and in the public interest.)

Minute No. 4 – Public Forum. Mr. Caleb Jaffe from the Southern Environmental Law Center appeared to comment on the Mirant Potomac River Generating Station. Mr. Jaffe asked that the Board consider taking the first steps necessary to retire the plant permanently, as that is the only way for the facility to comply with the law.

Mr. Sean Connery from Mirant also appeared during the public forum. Mr. Connery informed the Board that Mirant was still in active negotiation on the consent decree. He advised the Board that Mirant is still working with DEQ and fully expects to be able to operate the facility in compliance with the law.

Minute No. 5 - Report on Air Quality Program Activities. The Board received the report as contained in the Board book. In addition, Mr. Robert A. Mann, Office of Air Regulatory Development, presented additional information on ozone data for 2003-2005, the new source review reform court decision, and the Duke Energy court decision.

Minute No. 6 - Minutes. The Board, on a motion by Ms. Siddhanti, approved the minutes from the June 22, 2005 meeting. Mr. Moore and Ms. Thomson abstained.

Minute No. 7 – High Priority Violators (HPVs) for the Second Quarter, 2005. The Board received a report on high priority violators for the second quarter of 2005. In addition, Mr. Michael Dowd advised the Board that the Department is continuing to work towards a resolution of the NO_x violations at the Mirant Potomac River Plant. He provided the Board a chronology of events concerning Mirant since submission of the modeling results received on August 19, 2005. The Board members expressed concerns with the current situation and discussed various options available to ensure compliance with the ambient air quality standards including initiation of processes to revoke and reissue the permit. In addition, the Board asked staff to schedule a Board meeting whenever the Department determines action by the Board is appropriate and necessary.

Minute No. 8 – Chesterfield Power Station. The Board members visited the Chesterfield Power Station for a presentation on and tour of the facility.

Cindy M. Berndt