

**MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
THURSDAY, MARCH 20, 2008**

**Holiday Inn Alexandria
2460 Eisenhower Avenue
Alexandria, Virginia**

BOARD MEMBERS PRESENT:

Richard D. Langford, Chair
John N. Hanson
Bruce C. Buckheit

Vivian E. Thomson, Vice-Chair
Hullihen W. Moore

DEPARTMENT OF ENVIRONMENTAL QUALITY

David K. Paylor, Director
Cindy M. Berndt

ATTORNEY GENERAL'S OFFICE

Carl Josephson, Senior Assistant Attorney General

The meeting was convened at 10:10 a.m., recessed at 12:55 p.m., reconvened at 2:10 p.m., recessed at 4:00 p.m., reconvened at 4:15 p.m. and adjourned at 5:35 p.m.

Minute No. 1 – Mirant Potomac River Generating Station: Messrs. Michael Dowd and Terry Darton presented the 2-stack and 5-stack state operating permits for the Mirant Potomac River Generating Station to the Board and reviewed the public comments received on the permits. The Board then heard from elected officials, representatives of the City of Alexandria, the public and the Company.

Based on the Board book material, staff presentation and Board discussion, Ms. Thomson moved that the Board hold consideration of the comprehensive permit limits until DEQ undertakes the following: establishes PM2.5 emission limits set independently of PM10; matches the permit's NOx limits with those of CAIR; develops a synthetic minor permit for which no emission increases are allowed; and undertakes a more comprehensive analysis of the effects of shifting to sodium bicarbonate on emissions and on NSR applicability. Mr. Moore seconded the motion. Upon discussion of the motion, the Board unanimously approved amendments to the third and fourth item of the motion. The Board, on a vote of 4 to 1 (Mr. Langford voted no), approved the amended motion to hold consideration of the comprehensive permit limits until DEQ undertakes the following: establishes PM2.5 emission limits set independently of PM10; matches the permit's NOx limits with those of the Clean Air Interstate Rule, CAIR; develops permit terms for which no annual emission increases are allowed; and removes the permit provision that refers to sodium bicarbonate, or sometimes referred to as SBC.

Further, on a motion by Mr. Buckheit, the Board unanimously set aside any further consideration of the 5-stack permit option for the Mirant Potomac River Generating Station.

(A partial transcript of the Board motions and discussions is Attachment A to the minutes.)

Minute No. 2 – Dominion Virginia City Hybrid Energy Center: Mr. Paylor briefed the Board on the status of the permit issuance processes underway for Dominion's proposed Virginia City Hybrid

Energy Center in Wise County.

The Board, on a motion by Mr. Moore, took over the authority and control of the permits for the Dominion Wise County project. The vote was 3 to 2 with Messrs. Hanson and Langford voting no.

(A transcript of the Dominion proceedings is Attachment B to the minutes.)

Minute No. 3 – Future Meetings: The Board set May 22, 2008, as the date of their next meeting.

Cindy M. Berndt

PARTIAL TRANSCRIPT OF THE PROCEEDINGS OF THE
STATE AIR POLLUTION CONTROL BOARD
AT ITS MEETING ON MARCH 20, 2008
REGARDING
MIRANT POTOMAC RIVER GENERATING STATION

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State Air Pollution Control Board

Richard D. Langford
Vivian E. Thomson
John N. Hanson
Hullihen W. Moore
Bruce C. Buckheit

Department of Environmental Quality

David K. Paylor
Michael Kiss
Michael Dowd

Mirant Potomac River Generating Station

Kevin Finto
Walter Stone

City of Alexandria

William Skrabak
Milay Jindal

LANGFORD: Do we have discussion or motion by the Board?

THOMSON: We have a motion. Recognizing the very hard work that has been undertaken by DEQ in the past few months to propose and take comments on these permits. I and, I believe many Board members; remain concerned over several issues which have been aired today. Therefore, I move to hold consideration of the comprehensive permit limits until DEQ undertakes the following: to establish PM2.5 emission limits set independently of PM10, to match the permit's NOx limits with those of CAIR, to develop a synthetic minor permit for which no emission increases are allowed, to undertake a more comprehensive analysis of the effects of shifting to sodium bicarbonate on emissions and on NSR applicability.

LANGFORD: We have a motion. Is there a second?

MOORE: I'll second it.

LANGFORD: Okay. Mr. Moore has seconded the motion. Discussion? I'll kick off with part of that discussion. There are four points there and the last of the four I consider unnecessary considering everyone has agreed that the inclusion of SBC, the sodium bicarbonate solution, is already covered by our regulations and can not be done until this analysis is done. I don't see any reason to hold up the trona, if I can call it that, the trona solution waiting on a potential SBC which may or may not ever come to pass.

BUCKHEIT: I tend to agree with that, but perhaps the simplest solution is to remove the extraneous phrase from the permit if it doesn't add anything to and it's causing problems.

LANGFORD: I would be happy with that.

THOMSON: I would accept that as a friendly amendment.

BUCKHEIT: Okay.

LANGFORD: If we can keep this official, if you'd, I hate to do this in parliamentary ease, but you proposed, you moved an amendment to the motion and you have seconded the amendment to the motion to remove the fourth bullet off the prior motion.

BUCKHEIT: Provided that the language in the permit is withdrawn.

LANGFORD: Okay, but I think everyone agreed it was superfluous.

THOMSON: So it's amended to remove the fourth bullet provided that that particular provision in the permit referring to SBC, referring to that provision with respect to SBC is removed from the permit.

BUCKHEIT: In fact, why don't we just amend the motion to remove the provision from the permit?

LANGFORD: I want to make sure we're all clear about it. So we have a motion and a second and an amendment and a second to make some changes to the motion. Are there any discussions on the amendment? All in favor?

BUCKHEIT: Well do we get to have a discussion?

LANGFORD: Yeah. I'm sorry. You didn't jump in like you usually do.

BUCKHEIT: My reputation precedes me. Yeah, I'm not prepared to adopt the 2-stack permit today. I have to wrestle through, I'm not saying that there's anything wrong with Mr. Kiss' analysis, but I need to understand better and wrestle through the NSR issues. It's pretty clear under the law that we can't issue the permit unless we can fill in the number for the PM2.5.

LANGFORD: We may be in a different place. I was asking for the rest of the Board to concur with the amendment we made to delete the fourth point. Did you have any other discussion on that? Did anybody else have any discussion on that?

THOMSON: No.

HANSON: We're approving

LANGFORD: We're now going to vote on the amendment to the motion; the amendment to delete the fourth point as presuming that they've also deleted the language from the permit. All in favor say aye.

MEMBERS: Ayes [unanimous]

LANGFORD: All opposed. Okay. Now we're now down to a motion that we can have discussion on. Mr. Paylor.

HANSON: Can we hear the motion one more time?

LANGFORD: Yes we may. There it is.

THOMSON: I move to hold consideration of the comprehensive permit limits until DEQ undertakes the following: to establish PM2.5 emission limits set independently of PM10; to match the permit's NOx limits with those of CAIR; to develop a synthetic minor permit for which no emission increases are allowed; to remove the permit provision that refers to SBC, sodium bicarbonate.

LANGFORD: Mr. Paylor.

PAYLOR: Yes Mr. Chairman, I just want to make the comment that if I understand the motion correctly for us to accomplish the first task will put off any final determination on this permit indefinitely. I think what Mr. Buckheit was trying to get a handle on exactly how long that was and while we don't know, it could put it off six to twelve months,

HANSON: If I could ask a question following up on that. If that were the case, what will we be living under for six to twelve months?

BUCKHEIT: The current permit.

HANSON: And how many pollutants are controlled under the current permit?

BUCKHEIT: PM, SO2.

LANGFORD: I believe that only one, SO₂.

BUCKHEIT: And NO_x under the consent decree.

THOMSON: NO_x

LANGFORD: NO_x under a consent decree, but the permit only actual deals with SO₂.

BUCKHEIT: Okay. I'm not comfortable with the idea that we're hyper spacing this for six months to a year. I guess what I would like to do is for me I may resolve my concerns in the next month if I can understand these items better and so I would suggest while the motion is fine that we undertake to reconsider whether we're prepared to issue the permit at our next meeting. I have come to believe that the best thing for the public welfare of the residents of the City is a merged stack, but with the right limits and with compliance with all the applicable rules and you know we may get a better sense after I get a chance to talk to Mr. Kiss as to whether he thinks dispersion credit will be needed. If he thinks it won't be needed, we don't have to get into issues as to whether the trona project would qualify for it. I think all the other issues that comment has been fully vented on all other issues. I'm still not there on the modeling and it may be just my ignorance, but I don't think that we have to say that we will never take this up again until the work group is done and all is known, but yet I think we have to figure out, the law does seem to require PM_{2.5} limit in the permit.

LANGFORD: Do you have an idea of how you would put a 2.5 limit in the permit short of completing the work group?

BUCKHEIT: I don't know. I would ask Mr. Kiss if he has any ideas.

KISS: Certainly I think at this point until we adopted an official policy that was applicable statewide, which would be the end of the implementation work group and perhaps adoption of public notice and getting comment on our procedure and finalizing it.

BUCKHEIT: Can we adopt an interim policy, say based on New Jersey or Connecticut or someplace, and say this is what we will use for six months or a year?

KISS: Due to the controversy associated with these modeling procedures I believe its best that we go to public comment and so I don't think that's a good idea.

BUCKHEIT: Maybe right now we move to solicit public comment on whether we should use, you pick it, New Jersey or Connecticut or whatever, until such time as we can go forward. We're going to have the same issue with the Wise County plant where you know that folks are going to be looking to challenge that permit and if the permit is issued without a PM_{2.5} limit it's going to be a lightning rod. So I'm wondering if there's a way to get a number with an interim policy that we think is good. It may be subject to revision later, but, you know, is there a way to have

LANGFORD: Mr. Kiss. I thought I heard this morning that perhaps you or someone said that to your knowledge no jurisdiction was using the interim 2.5 guidance for existing sources. Is that correct?

KISS: That is correct.

LANGFORD: So there is no other state that we could take for existing sources.

BUCKHEIT: I thought in the comment period we had Connecticut, I believe, using it for existing sources and I thought that Alexandria included a copy of the modeling report used by a source in Connecticut to establish its compliance with the NAAQS.

KISS: That was a new source permit action. We specifically talked to Connecticut and they indicated to us; none of these states are using these policies to evaluate existing sources.

BUCKHEIT: Can we use the one that they used to evaluate a new source to evaluate; I don't understand what the distinction is. If it's a new Greenfield source, if we have this source here, we're trying to use it for a stack.

KISS: I don't think adoption of those policies is advisable.

BUCKHEIT: And you think that's better than holding up Mirant and perhaps holding up Dominion?

KISS: I think if we adopted those policies to evaluate existing sources, it would set a very bad precedent.

BUCKHEIT: And if we adopted it on an interim basis that is subject to revision and review and so on, you're recommending against that.

KISS: Yes.

LANGFORD: Go ahead Mr. Paylor.

PAYLOR: I'll step out on a limb and say something that I think Mike is trying to avoid saying and that is that I believe, and you can tell me if I'm wrong Mike, that our assessment of those protocols is that they are, I'm not going to use the exact words that you used, but they are so conservative as to lead to results that would not be at all representative of the kinds of decisions or the kind of information that we want to base a decision on.

LANGFORD: Okay.

BUCKHEIT: Would they be enough, could the Mirant plant qualify under those things?

KISS: No.

BUCKHEIT: All right.

LANGFORD: Are there other discussion on the motion? I have some, but I'll wait to see if other members have some comments on the original motion. Mr. Moore.

MOORE: I am concerned about the 2.5 and I don't want to put it off because I agree that given where we are the 2 stacks could be very good. It could be certainly better than were we are now, but I think we do need some more assurance than I have right now about the 2.5. I don't want to do this and find out later that well gee they are going to have to do something else, a bughouse, whatever it is, to address that and we are stuck

and, more importantly for them, they are stuck and I don't know how we can get that assurance and I think that's probably what Mr. Buckheit was searching for with those other sources.

FINTO: Mr. Langford may I speak for one second?

LANGFORD: Only if it specifically addresses the issue of PM2.5 permit limit.

FINTO: Yes. My name is Kevin Finto. This is the reason we have the interim policy. You may not like it, but it's what we have. The PM10 is used a surrogate for PM2.5.

LANGFORD: Do you have something specific to add about a 2.5 limit?

FINTO: Yes. The fact of the matter is you can set the PM2.5 limit in the permit equivalent to the PM10 limit. That is you can write a PM2.5 limit and have a numeric limit the same as the PM10 limit. Now there may be a day when something has to happen to the plant, but as I understand it the stack merge is not going to affect the PM2.5 that we're talking about here. They have to add on equipment now, but none of the equipment they're talking about putting on right now will be affected, none of the equipment they're talking about right now will affect particulates.

BUCKHEIT: I know I can take out a typewriter and type in a number. What I don't know is whether I can affirm that that number will affect the residents in the area against an exceedance of the PM2.5 NAAQS.

LANGFORD: Which is the crux of that part of this problem.

FINTO: You're imposing limits. There are no limits right now. You're going to be imposing limits. There are no violations right now and it seems if you put a limit in there, it can only protect the NAAQS. Thank you.

LANGFORD: Are there other comments on the bullet one of establishing a 2.5 emission limits? I'll try to end that before I move on to other comments on the motion.

BUCKHEIT: Yeah I don't know if I'm out of order, but I guess I'd like to propose an amendment to it.

LANGFORD: Amendments are always in order Mr. Buckheit.

BUCKHEIT: I never did study Roberts. I would caveat the motion saying that we will take this issue up again at our May 20th meeting.

THOMSON: Do you want that to be a formal part of the motion?

BUCKHEIT: Yes.

LANGFORD: But I don't know what you mean by take it up again.

BUCKHEIT: That we will revisit the original list of four after we've had all this chance to think of it some more and see if we can come up with some kind of creative solution to get us to some level of comfort on the PM2.5 and get this project moving. I'm uncomfortable with two things. I'm uncomfortable with not protecting the citizenry against the PM2.5 on the one hand. I'm very uncomfortable about holding up the

Company for six to twelve months on the other hand. I said earlier that the Company has come a long way and I meant it. We have some issues to resolve on PM2.5. I'd like to see if we can get them done and I don't see it any way desirable to take six months to a year to get this resolved, but I also can't get my arms around issuing this permit with a blank PM2.5 number. I don't want to give up on being able to do it in May.

LANGFORD: Okay. As I read the motion it doesn't specify. Six months to a year was a discussion. Still it can be done.

BUCKHEIT: The motion is that we will take up this motion again at our May meeting to see if it should be advised. We may want to say

LANGFORD: I don't think that's a motion.

THOMSON: I guess I would suggest that we not amend the motion. That I think we are agreed as a Board that we feel the push me, pull me of those two opposite forces and that we will agree as a Board to take the issue of what we can do in faster fashion to get 2.5 emission limits that we are more comfortable with.

BUCKHEIT: With that, I'll withdraw the amendment.

LANGFORD: Mr. Paylor.

MOORE: I didn't hear what she said. I'm sorry. I was talking.

THOMSON: I said that I do not believe that we need to amend the motion. That I think as a Board we all feel the pull and tug of the two opposite forces; protecting the populace against emissions or ambient concentrations of PM2.5 on the one hand and allowing the Company to go ahead with the stack merge on the other and we will therefore take up the issue of what we could do faster than six to twelve months to establish a credible PM2.5 emission limits at our May meeting.

LANGFORD: And subsequent to that Mr. Buckheit withdrew his amendment. Mr. Paylor has been trying to get a word in.

PAYLOR: Thank you Mr. Chairman. I just want to go back to and reinforce what I said earlier. While between now and May we can do some clarifying work with the Board on what we have already done and are certainly prepared to do that. Beyond that, we feel that any further progress that we can make on PM2.5 is tied to this work group and also, tied to guidance from EPA. When EPA in fact issued a 2.5 standard, they created this scenario in which they had a standard without guidance to implement it. We're eager and ready to implement 2.5 limits when we believe we have a credible basis to do that. So between now and May we can clarify. Other than that, my statement that we run the risk of a significant delay stands because of those two issues. And then if I could and for now or later in the discussion I need clarification on two points. The staff remains unclear about precisely what is meant by the term synthetic minor when the Board refers to it.

LANGFORD: We're going to get to that.

PAYLOR: And the issue of no emissions increase is also a question.

LANGFORD: Yeah. I was going to ask that. In just marching down the bullets, the next bullet is to match the permit's NOx limits with those of CAIR. Is there any discussion among Board members about that or is there any input from staff about that.

BUCKHEIT: That's just a drafting issue. It takes five minutes.

LANGFORD: I just want to make sure there weren't any underlying issues that Board members weren't aware of. So that's not a problem.

DOWD: I'm looking at staff and it is not.

HANSON: Is that a problem for the City or for the Company?

STONE: This is Walter Stone. Yes it would be a problem for us. For one, we don't know what the CAIR numbers are going to be. There is a true-up, for instance, for the set asides for new sources. We don't know what that number is going to be and as you probably know we have challenged the trading restrictions.

BUCKHEIT: And if you win on that challenge, the permit can be revised.

STONE: Thank you.

LANGFORD: Okay. So the Company has some concerns about that.

HANSON: Mr. Chairman. How about the City?

LANGFORD: Yeah. Mr. Skrabak, what are your thoughts on putting the CAIR NOx limits in this permit?

SKRABAK: I think the Board put that out for public comment and our support for that is in the record.

LANGFORD: All right. Do the Board members have any other discussion about the NOx limits? The next bullet was the one Mr. Paylor was referring to.

BUCKHEIT: Do you want to vote?

LANGFORD: No let's vote on the whole thing. I'm just trying to take it piece by piece for the discussion to keep it clear. The third bullet on the motion is to develop a synthetic minor permit for which no emission limit increases are allowed and I also had a question. I'm not sure what that is trying to do. Can you more clearly maybe explain the purpose behind that Vivian?

THOMSON: I'm sure that Mr. Buckheit will elaborate on this, but ever since our meeting last September I think intended certainly that whatever permit that we would ultimately be comfortable with, any comprehensive permit, would not raise emissions over what they are currently and that is the intention, I thought, of our discussion about a synthetic minor permit that would avoid triggering NSR.

LANGFORD: Do you want to take that?

BUCKHEIT: Yeah, I can help. I don't know that the permit doesn't have those. Let's start with that. I did think that I detected an error in calculating the baseline. What we need is

to go back through time and look at the several different triggers of NSR that may or may not have occurred, but that we're trying to resolve. So we need to set a synthetic minor limit that would protect against an increase from emissions from the old projects; SOFA, low NOx. Okay and maybe the thing to do so it's clear to everybody what we're doing is to have just a section in the permit called synthetic minor limits; set out which event the synthetic minor limit is protecting - baseline, emission limit, zero increase; and then the second round of synthetic minor was triggered by our determination this past fall that the fan replacement, stack merge project could increase emissions and therefore needed a synthetic minor cap and so we in the same section lay out a synthetic minor permitting, you have a bold A – trona etc., bold B – fan replacement project, baseline year, emission limit to match and that would be all that's required. I think it's in there, scattered around, and I think it may, as I said, been one error in doing it.

- DOWD: A clarifying question Mr. Buckheit. Would your motion set the baseline year we're to use in these comparisons for these projects?
- BUCKHEIT: No. A, I don't have a motion.
- LANGFORD: He doesn't have a motion.
- BUCKHEIT: But B, no. C, we would reserve the right when you come back to us if we disagreed with your suggested baseline to disagree, but we would be asking you to use the rules fairly and in your best judgment to figure out baselines, etc. You have thus far I think quite probably adjusted downward the SO2 limit for NAAQS compliance purposes and NOx numbers to reflect the consent decree and that is entirely appropriate and suggested that continue.
- LANGFORD: One thing that I want to clarify about synthetic minor limits or synthetic minor permits is that they are intended, as was stated, to avoid the triggering of major new source review. In that regard they are not often written with no emissions increases. They are generally written with emission increases allowed that are less than the significance level that would have triggered the major NSR.
- BUCKHEIT: But I would have a problem with each one of these iterations getting a bump up. Just so you know.
- LANGFORD: I just want to make it clear.
- BUCKHEIT: Especially to correct a past violation.
- LANGFORD: I do want to make it clear that with the motion as it is on the table for discussion, it says a permit with no emission increase. I just want to make sure that when we're done, we're clear on what it is that the Board has directed and I'm hoping that we can perhaps clarify this language.
- BUCKHEIT: I actually like the language the way it is.
- LANGFORD: You want a separate permit?
- BUCKHEIT: No. I want these synthetic minor limits to not allow any increase.
- LANGFORD: To develop a synthetic minor permit is what it says. To develop a permit.

BUCKHEIT: No, permit limits.

LANGFORD: So you all like the way it is.

DOWD: So it would not allow for a significant, an insignificant increase is the way I understand it.

MOORE: Let me.

LANGFORD: Mr. Moore.

MOORE: Mr. Chairman. I think, well I know, but I was getting kind of antsy. I think that the staff is entitled to a list. When we say no increase, what are we worrying about? What particular items? I think Bruce had a couple and one you thought was taken care of and I just want to make sure they've identified them all so when come May or when we get the book for May we won't have any surprises. Well that's exactly what we expected. You may not like the number, but they will have addressed each of these issues. Could you or Mr. Buckheit and Ms. Thomson make sure we've got the list.

BUCKHEIT: Not now, no.

THOMSON: Not now.

LANGFORD: Not during the meeting I don't think. Mr. Paylor you had something you wanted to say.

PAYLOR: I just wanted to try to make sure I understand the synthetic minor term a little bit better. In Virginia we use the term "synthetic minor" to put a cap on allowable emissions to keep those emissions below major thresholds.

LANGFORD: Correct.

PAYLOR: So that we avoid using the 87/60 to bring people into a major status when their actuals are in fact not at a major category. We don't use the term "synthetic minor" in the sense that you're using it here and I, which is fine. What I'm hearing, I just want to make sure that I'm hearing it correctly, is that this needs to be a permit that results in no increase that triggers major NSR or anything else.

LANGFORD: Go ahead Mr. Buckheit.

BUCKHEIT: I think what we're quibbling over is whether the permit would allow an insignificant increase.

PAYLOR: Okay.

BUCKHEIT: And especially where we're going back in time, in lieu of requiring BACT or LAER from those earlier violations to say that well we'll throw in just for fun 39 extra tons of SO₂, I don't think is appropriate. So that's why, when I said I like the language the way it is, this says no increase.

PAYLOR: I'm sorry, if I could, Mr. Chairman. And I understand that that's clear and the

reason I want to clear this up is the term synthetic minor has tripped the staff up and has tripped us up in discussions with the public as well in terms of what was meant by that. So I want us to be clear.

LANGFORD: Do we need that term in the motion?

PAYLOR: I don't believe so.

BUCKHEIT: Well we don't need it in the permit, but let me ask Mr. Skrabak

LANGFORD: In the motion. We need it in the motion, the term synthetic minor or do we just want to say all permit limits for which no emissions increase is allowed?

BUCKHEIT: Mr. Skrabak. Is what I just layed out consistent with what the City's view of what a synthetic minor permit should accomplish?

SKRABAK: Yes.

BUCKHEIT: Thank you. The label, I don't know why the label is confusing, but there's no magic work there.

JINDAL: Mr. Chairman. This is Malay Jindal. May I ask a question?

THOMSON: Yes.

JINDAL: The question is when you say "no increase in emissions" are you referring to only to annual emissions?

BUCKHEIT: Yes.

JINDAL: You're not referring to short term increases in emissions? The comment I have is if you're trying to resolve past NSR issues with this permit, typically when go back in time to resolve NSR, you do enforcement and make them do BACT

BUCKHEIT: That's right.

JINDAL: You do technology based limits for both, short term and annual; not just annual. For this permit, should it not address both short term and annual?

BUCKHEIT: No. I'm not prepared to support that. A synthetic minor limit doesn't do that, it caps the annual emissions.

THOMSON: Annual emissions yeah.

LANGFORD: I think annual emissions are what we're trying to deal with.

THOMSON: I think that's an important distinction. Am I allowed to amend my own motion?

LANGFORD: You may.

THOMSON: I'm going to amend that bullet to say: for which no annual emission increases are allowed. Do I have a second on that?

MOORE: Yes, I seconded the first and I'll second that.

LANGFORD: We have an amendment and a second and you didn't want to change the rest of it?

THOMSON: No.

LANGFORD: Okay, but I don't like the rest of it.

HANSON: Which rest of it don't you like?

LANGFORD: It implies there's a separate permit to be developed and I don't like that.

THOMSON: I don't think anybody said that.

BUCKHEIT: How about permit terms?

LANGFORD: To develop permit terms for which

THOMSON: no annual emission increases are allowed.

LANGFORD: no annual emission increases are allowed.

THOMSON: Right.

LANGFORD: over whatever the background is.

THOMSON: All right. I'm amending motion to read: the third bullet says to develop permit terms for which no annual emission increases are allowed. Do I have a second?

MOORE: I'll second that.

LANGFORD: All right. We have an amendment and a second; do we have any discussion on that, any further discussion on that amendment? Seeing none, all in favor of the amendment say aye.

MEMBERS: Ayes [unanimous]

LANGFORD: All opposed say no. Okay. Are there other comments or discussion on the motion itself? Let me, we've gone through the elements of it.

HANSON: I'm still confused over the NOx, I mean the PM2.5. I hear one person say that the law requires us to have a 2.5 limit in the permit. I hear someone else say we don't have one in there right now. That seems to be a problem. I hear someone else say, one of the experts I think for the Company say there's no way under any scenario there could be a violation of the NAAQS given the operation of this plant for 2.5. I hear someone else say to develop a 2.5 limitation would take us a long time. What is the thrust of that part of the motion in terms of what we're going to end up doing with 2.5? I'm concerned that we're not addressing 2.5, but I don't know the fallout from that first bullet in the motion. I don't know. I was quiet during the rest of the dialogue because I'm trying to figure out what am I missing here. Where the hell are we?

BUCKHEIT: I think the way I understand the motion is that the motion requires establishing a

PM2.5 limit that can be shown to be protective of the NAAQS which would require the modeling. It's subject to the agreement of the Board that we will try to educate ourselves and revisit the issue at our next meeting so that if we can find a way to avoid throwing this whole project into hyperspace, we can do that.

LANGFORD: I think we may be at the original catch-22 here in that we need a PM2.5 limit, there's no monitoring evidence to suggest that any of the current emissions have exceeded the 2.5 limit, modeling has been done on both sides of that issue depending on how the model

BUCKHEIT: I think the regulation puts the burden of proof the other way.

LANGFORD: I'm not talking about a burden of proof.

BUCKHEIT: What I'm saying is that I believe the regulation is to the effect that in issuing a permit we must set a limit that will ensure

LANGFORD: I'm not going there. I'm just trying to lay out the facts of where we are in between these two issues; a rock and a hard place, if you will. On the one hand we've got no hard evidence that there is such a problem. On the other hand we have the issue you raised. The legality is that we're supposed to do some other stuff and the other stuff we don't think we can get done for a long time, but no one wants to wait that long. So that's the conundrum that I think that you're suggesting that the staff go back and scratch heads

BUCKHEIT: I want to scratch my own head.

LANGFORD: and see what can happen before the next meeting. I think is where you are with that. I think that's where we are and I don't know that we're going to get any further today on it. I think it's something the technical experts are going to have to deal with that probably.

HANSON: If the motion passes, then. Read that first bullet again.

LANGFORD: Hold the comprehensive permit limits until DEQ undertakes the following: to establish PM2.5 emission limits set independently of PM10. In order words to set actual PM2.5 limits.

HANSON: So if we pass that and we come back on May 20th and after everybody has scratched their noggins, pick this issue up again, we may, but we may not, but we may amend this motion. So in a way it's deferring this action.

LANGFORD: Basically what it says we've got to establish emission limits. This motion does not specify how to do it or even that we have to be in compliance with the law that Mr. Buckheit laid out, but that's what the motion says. Any more discussion on this motion at this time? I think we'll do, if not, I'm going to call for a vote and I think I want to do a voice vote on that. Anybody want to have any comments before your vote as to what your position on such is? Anybody other than me? Prior to the vote I just want to say I think this is a clear motion which I think our amendments have cleared up what the motion is and I'll read it before we vote. I have the same concern that Mr. Buckheit has raised and I think Mr. Hanson may be getting at and that I think long-term the 2 stack operation is going to be to the benefit of the citizens of Alexandria and the conundrum we find ourselves in with the PM2.5 has a

potential of slowing that down if we don't find a way around that and so for that reason I guess I come down a little bit on the different side than what others do which is not unusual in that I'm concerned about holding this up while we do the rest. But in any event, that's my last comment. Any other comments on the motion before I call for a vote? Mr. Moore.

MOORE: I share those concerns and I wish I didn't have to vote for this, but I think I do. I think I'm not comfortable with the 2.5 limits and I'm hoping maybe there's a way we can find that we can either be comfortable with it. I don't, I guess it is that we will be comfortable with a number so that we can come back in May and act and I'm doing it on that basis. If we can't, we'll have to look at it again and maybe at that time we may decide to do something else, use a PM10 number, but I certainly don't see how we can do that now. That's one of the numbers we know isn't right.

HANSON: First as a general matter I want to say that someone suggested and I think it's in their heat of comments that the DEQ is not concerned about public health and welfare and I don't agree with that statement. Just as I don't agree with the statement that Mirant is not concerned about public health and welfare. I take those comments to mean, however, that people disagree with the way that DEQ has made a recommendation or what Mirant has suggested and it's fine to have disagreements, but I think everybody in this room is intending to reach an appropriate solution. I came into the meeting today in favor of the 2-stack permit, but listening to the discussion and thinking as a lawyer what the record would look like based on this discussion, I don't have confidence that voting in favor of this permit, the 2-stack permit, would survive attack. I don't think it, more importantly actually, I don't think it would give the public confidence that we have done everything we should do to protect public health and welfare. I once cast a vote in this room that angered some people from the City of Alexandria. I explained my reason for voting for it which was because I indulge in the presumption of correctness from the staff, but at the same time I said to the staff and I said to Mirant that when it came time to vote for real, if you will, on the permit I wanted to be sure in my heart that it was the best everybody could do to protect public health and welfare and I honestly can't say that today primarily because of the 2.5 issue. I don't know what the answer is on 2.5 and the answer probably won't satisfy everybody when we get to it, but I don't think we're there yet and therefore I'm going to vote in favor of this motion today in hopes that sooner rather than later we can get to an acceptable answer on 2.5 and other issues that have been discussed today because I do have concern for the Company. They have been waiting for a long time to get on with their business and they're entitled to get on with their business as soon as possible. I also, however, have concern with the concerns expressed by the citizens and finally I have real concern for my good friends on the staff who will go from this room and try to figure out what the devil did they just do to us. So I hope that between now and the 20th we can try very practical, clarifying concessions where they make sense and hopefully on the 20th or soon thereafter finally put this permit to bed.

BUCKHEIT: I just have to offer up a word of thanks to the staff and sort of a word to those who commented. I started doing NSR work in 1984 and probably have done more NSR enforcement than almost anybody, maybe anybody. I have never run into a fact pattern as confused as this. This takes the cake. The staff have worked tirelessly and without thanks; although occasionally we pat them on the back. Mr. Kiss has promised me he is going to sign my copy of his paper. He came back off his vacation to try to educate me on these issues and so folks, you can be unhappy about the decisions DEQ makes and the recommendations that the staff makes. It's all

David's fault. The ones you don't like belong to Mr. Paylor, but please understand that the DEQ are trying to do the right thing within the confines of the policies of the policies that Mr. Paylor will allow and I'll give him a pat on the back for having to put up with me. So thank you.

PAYLOR: Mr. Chairman if I may. I was going to thank Mr. Buckheit, but I do thank you for that. I have to say, I've stayed quiet a lot of times at a lot of these meetings. A lot of aspersions have been cast at the staff. The staff that we have are professional. They are dedicated to protecting the environment and they are dedicated to upholding the law and anyone who wants to claim otherwise I take great exception with.

THOMSON: The great advantage of going last is that many of the things that you would say have already been said. I offered the motion for the same complex of reasons that have been articulated by my colleagues, Buckheit, Hanson and Moore. We received two and a half notebooks full of information for this meeting and as we studied it carefully and hard and as we listened today, we just feel that we are not quite to the point where we can approve the 2-stack or the 5-stack version of the permit. I think we all hope that we're closer rather than farther away. I think we all hope that we can develop a credible, protective 2-stack version of the permit sooner rather than later. I want to also underscore my respect for the DEQ staff. I have been on the Board now for almost six years. They work with extreme resource constraints. They are dedicated. They are hard working. They're experienced. I respect their work. It discourages me to hear negative things expressed about them and I realize that the history here in Alexandria, feelings on both sides are strong, but I wish somehow that comments about the DEQ staff could be moderated appropriately in the future.

LANGFORD: Once last summary. Since I started this off, I'll try to end it. The DEQ staff has done an excellent job and I appreciate that, but where I come down with this, that staff has determined that the 2-stack option before us is protective of public health, NAAQS and SAAC. It does not have a 2.5 limit. Therefore, potentially is legally deficient which is where some of my colleagues are coming down, but I just am reminded that 1, there's no monitoring evidence that there's an exceedance of the 2.5 NAAQS limit; not only from the plant, but in fact in all of northern Virginia. While the northern Virginia area is technically nonattainment for 2.5, it is only because it is in the metropolitan statistical area with the rest of Washington, Maryland and D.C. The actual monitors in northern Virginia are all in attainment. So there's no nonattainment issue for 2.5 in Virginia and therefore I think the risk of issuing the permit with no 2.5 limit is lower and that's the reason I'm going to vote differently than some of the other people, but I am now going to call for the question. The motion before us is to hold consideration of the comprehensive permit limits until DEQ undertakes the following: to establish PM2.5 emission limits set independently of PM10; to match the permit's NOx limits with those of the Clean Air Interstate Rule, CAIR; to develop permit terms for which no annual emission increases are allowed; and to remove the permit provision that refers to sodium bicarbonate, or sometimes referred to as SBC. So that's the motion that we have and I'll start to my right and I'll ask for voice. Mr. Buckheit?

BUCKHEIT: Aye.

LANGFORD: I believe Mr. Buckheit voted aye.

THOMSON: Yes.

LANGFORD: Chairman Langford votes no.

HANSON: Yes.

MOORE: Yes.

LANGFORD: The motion is carried. [4 to 1]

BUCKHEIT: I have a motion.

LANGFORD: Another motion.

BUCKHEIT: I move to set aside consideration of the 5-stack permit.

THOMSON: Second.

LANGFORD: We have a motion and a second to set aside any further consideration of the 5-stack SOP permit option, one of which we've been talking about today. Any discussion on that motion?

BUCKHEIT: Yeah, I will explain why I offer it.

LANGFORD: You may.

BUCKHEIT: Thank you. It's becoming increasingly clear to me as we plow through this PM2.5 debate that the best course for public health and for Mirant to operate its facility profitably is to pursue development of a 2-stack merger permit that protects public health and meets all the requirements of the law. The 5-stack proposal was an attempt to get to a comprehensive permit, i.e., one that set a PM2.5 limit, in the individual stack configuration. With all the work that I see on the horizon for the Board and for DEQ, I think it's a better use of all of our time to focus on getting the 2-stack permit done than to worry about consideration of a permit we don't need. The June 1st permit may not be perfect, but it seems to be working okay and so the idea would be to focus all of our efforts on the 2-stack permit.

LANGFORD: Further discussion on the motion? Seeing none, I'll call for a vote. The motion is to set aside any further consideration. Is that the phrase you used?

BUCKHEIT: Yeah and let me explain since it was a self-initiated permit I don't think we need to deny it. There's no application pending. We could decide to take it up some other time, but we're just going to set it aside.

LANGFORD: To set aside any further consideration of the 5-stack permit option for the Mirant plant. All those in favor say aye.

MEMBERS: Ayes. [unanimous]

LANGFORD: Opposed. Motion is carried.

[NOTE: Next Board meeting date was changed to May 22, 2008]

TRANSCRIPT OF THE PROCEEDINGS OF THE
STATE AIR POLLUTION CONTROL BOARD
ON MARCH 20, 2008
REGARDING THE
VIRGINIA CITY HYBRID ENERGY CENTER

State Air Pollution Control Board

Richard D. Langford
Vivian E. Thomson
John N. Hanson
Hullihen W. Moore
Bruce C. Buckheit

Department of Environmental Quality

David K. Paylor
Cindy M. Berndt

Dominion

Jim Martin
Pam Faggert

Southern Environmental Law Center

Sarah Rispin

LANGFORD: On the agenda is an update for the Dominion Resources Virginia City Hybrid Energy Center. Mr. Paylor is going to pick up that ball.

PAYLOR: Thank you Mr. Chairman. You'll recall that at the last meeting we had some extensive discussion of this proposed project and it's been through public comment on the PSD permit. In the meantime the Clean Air Mercury Rule was vacated and so the project became subject or at least potentially subject to a case specific MACT requirement for mercury. So we have in fact gotten a proposal from Dominion and have reviewed that and have sent that to public notice. I believe the public hearing on that is April 3rd. At the last Board meeting a number of questions were asked by members of the Board that you wanted advice from the public, from the staff and from the Company and those questions, our best attempt at answering those questions have been provided to you and they are in your book. We have members of the staff here and representatives from the Company as well and citizens here who I believe happy to answer any questions that you may want to ask based on the answers that you got. We did not plan a specific presentation to lead you through all of that. As you know some of the responses that you got were attorney client privileged so I think what I would do is just ask members of the Board how we can further address or answer any questions that you have after having read the material.

LANGFORD: I'm trying to find the material Mr. Paylor. What's it supposed to be in Cindy?

BERNDT: The only thing we have sent out ahead of time.

PAYLOR: You didn't send the other stuff?

BERNDT: Well we sent Dominion's response to comments. We have provided them with a CD with everybody's response to comments.

LANGFORD: That's the one you just did.

BERNDT: Right. But that wasn't like in the Board book.

PAYLOR: So Dominion's response to comments they just received.

BERNDT: No they received Dominion's.

PAYLOR: So the public response.

BERNDT: Dominion's response to there questions was submitted electronically at the same time the attorney client privileged material was sent.

PAYLOR: Right. Okay.

LANGFORD: So that was the email that we saw.

BERNDT: Yes, that was the emails.

LANGFORD: Yes I know it is tough for staff, but it is certainly helpful if we can get this stuff, I know it's not always generated timely enough to do that and I know you're aware of that very much, but it's certainly helpful for a Board member, particularly those with pressing schedules to get this stuff as early as possible.

BUCKHEIT: Although I'll have to say there's never a good time to get 20 inches of material.

LANGFORD: Correct. My wife was like what in the world is in that box? Okay. I'm sorry. So where did we leave that?

PAYLOR: So we left it that we're prepared to answer any questions that the Board members may have. We haven't prepared a presentation.

LANGFORD: Okay. Do Board members have any questions?

MOORE: I have no questions but I do have a statement and a motion I want to make if this is the appropriate time.

LANGFORD: I believe it probably is an appropriate time Mr. Moore. Go right ahead. Pull that microphone right over there.

MOORE: I'm going to begin as I have before noting that power plants are not temporary installations. This Wise County plant and its pollution will impact the citizens of this Commonwealth for more than half a century. Pollution from the unit could affect the health of generations of our citizens and the environment of our region including other states far into the future. It is the responsibility of this agency and this Board to protect the health of our citizens and the environment of the Commonwealth when considering these applications. The policy of the Commonwealth as stated in our Constitution to protect the Commonwealth's atmosphere, lands, waters and pollution

from impairment, destruction and destruction for the benefit and enjoyment and general welfare of the people of the Commonwealth. This policy is implemented in the Code of Virginia. For example, § 10.1-1306 provides that the State Air Pollution Control Board shall do such things as are reasonably necessary to carry out the provisions of this chapter including the attainment and maintenance of such levels of air quality as will protect human health, welfare and safety and to the greatest degree practicable, prevent injury to plant and animal life and property and which will foster the comfort and convenience of the people of the Commonwealth and their enjoyment of life and property and which will promote the economic and social development of the Commonwealth and facilitate the enjoyment of its attractions. Section 1307 E continues. The Board when approving permits shall consider facts and circumstances relevant to the reasonableness of the activity involved including the scientific and economic practicality of reducing or eliminating the discharge resulting from such activity. We must always keep this brief section in mind. We must also remember that this agency and this Board are acting as part of and pursuant to our State Implementation Plan. Virginia's law and regulations were reviewed and approved by EPA as part of our SIP approval such that our actions carry out the Clean Air Act. It is with this background that we must consider the Dominion Wise County applications and the proposed permits. Over the last few months I have studied and reviewed the process and numerous documents related to the Dominion Wise County proposal. As part of this I have met with staff and had numerous telephone conferences with staff regarding the applications. In addition, we have heard from Dominion a number of times and others as well, orally and in writing. I have also examined prior permit evaluations and current and expected emissions of several pollutants from existing coal plants. I want to thank all of those who have participated in this process by testifying and filing comments. It is clear that great time, effort and thought went into the materials we have received. Your comments raised important questions, provided insight and helped us focus on the critical issues we must address. It is clear there are many questions yet to answer as this process moves forward. I also want to make, to say a special word of thanks to the DEQ staff for what they have done on this project and in general. They work hard and they have the best interests of the Commonwealth in everything they do. They often have very tough decisions to make. I also particularly want to thank them for their kindnesses and openness to me. You have answered my questions, responded to my requests promptly, courteously and patiently. After studying this material however I must conclude that Dominion's application fails to comply with Virginia law and the Clean Air Act. Further, DEQ's examination was too limited and the analysis did not consider critical facts and circumstances as the law requires. Mention is made of a recent Virginia statute and a 1987 Board policy as at least partial reasons for the limited analysis. Dominion argues that Virginia Code § 56-585.1 A limits the environmental review of this project. First, the statute does not state or suggest that it is to make such a limit. Moreover, even if Virginia law specifically purported to limit the environmental review and approval analysis, that law could not trump the federal Clean Air Act. The same is true of the 1987 policy. Interestingly, the statute at issue, even if read as a limit, may have little impact. The section refers to a coal fuel generation that utilizes Virginia coal and is located in the coalfield region of the Commonwealth; an area that encompasses seven southwest Virginia counties, including Wise. Thus the purported restrictions are: coal fired, utilizing Virginia coal and located in this seven county area. No one has suggested a site beyond the seven counties. As for the use of Virginia coal, it appears that we have much high quality right here in the Commonwealth. While it may have to be available for consideration, out of state coal may well not need to be burned. There are several areas where the application and the analysis fall short of what is required

by law. Rather than review each issue I will concentrate my discussion on one area. I chose it because it is simple, straight forward and critical. All of us, I believe, agree that under the Clean Air Act BACT requires, among many things, consideration of clean fuel. In addition, as I've already noted § 10.1-1307 E 4 requires consideration of facts and circumstances regarding the scientific and economic practicality of reducing or eliminating discharges from the plant. Those two alone require consideration of cleaner coal than that proposed by Dominion. Decisions of the Environmental Appeals Board make clear that technology and percent reductions are not enough. Cleaner fuel must also be considered. Specifically in Indeck-Ellwood the Board reviewed this issue with statements and quotes as follows. In determining BACT the permitting authority must assess for each pollutant the maximum degree of emissions reductions achievable through application of production processes and available methods, systems and techniques, including fuel cleaning, clean fuels or treatment considering various factors such as energy, environmental and economic impacts. The Board has consistently held that in deciding what constitutes BACT the agency must consider both the cleanliness of the fuel and the use of add-on pollution control devices. Thus, proper BACT analysis must include consideration of cleaner forms of the fuel proposed by the source. Let me repeat that. Thus, proper BACT analysis must include consideration of cleaner forms of the fuel proposed by the source. End of quote. And that is what DEQ has done in the past. For example, in the Clover engineering evaluation consideration was specifically given to low sulfur coal from the western United States. For cost reasons it was not required, but it was considered. In Mecklenburg the applicant proposed 2% sulfur coal, but was required to use 1.3% coal. Also, in 2004 in the CPV Warren application when discussing the requirements of 1307 E 4, the engineering evaluation states: the permit requires numerous pollution control strategies that will result in reduced emissions. These include pollution prevention techniques such as the use of clean fuels and clean burning low NOx pre-mixed burners. It is beyond question that federal and Virginia law require consideration of cleaner fuel. Instead of considering cleaner coal, Dominion and DEQ only examined technologies that would help given the high sulfur low heat content coal proposed by the Company. This fact is particularly evident for SO₂ and mercury. For SO₂, this is reflected in the engineering evaluation. The analysis explains that the hybrid generation station has a 95% removal efficiency of SO₂. It then notes that the proposed Company's plan would have a removal efficiency of 98%. The 98% efficiency was then applied to the Company's proposed fuel mix of 60% 2.8% sulfur coal and 40% 1% sulfur coal with a blend having an average heat content of less than 5800 BTUs per pound. The result was the limit .12 lbs per million BTUs for the Wise County project. Over the last 18 years Virginia has permitted five coal fired power plants. Interestingly, the engineering evaluations for those plants were issued in a 38 month period; from October 1989 to December 1992. Review of these evaluations is interesting and, I believe, instructive. In each case the quality of coal, particularly the heating value and sulfur content was important, discussed and highlighted. For the five, the average heating value ranged from 12,300 BTUs to 13,000 BTUs per pound, with the average being about 12,500. In this case the Company's proposed fuel is 60% 2.8 % sulfur coal with a heating value of less than 7800 and then 40% of this waste coal with a heating value of less than 2800 BTUs per pound which yields an average heating value of less than 5800 BTUs per pound and an average sulfur content of 1.8%. Thus, the heating value of the coal proposed for this plant, 5800, is less than one half of the average BTU coal considered for those five permits 15 years ago. Now what that means is that over 2 lbs of 1.8% sulfur coal must be burned by the proposed facility compared to just 1 lb of 1% sulfur coal for a unit evaluated a decade and a half ago. Well you may ask what

about the heat content of coal currently being burned in Virginia's coal power plants. According to DEQ for 2005 and 2006, heat content per pound of coal in Virginia's power plants ranged from 12,000 to 13,000 with 90% of the boilers using coal in the 12,500 to 13,000 BTU range. Let's now look at sulfur content and the resulting emissions from the five plants examined in the early 1990s. Great progress was made in the 38 months from first to last. First the sulfur content: October 1989 – 1.6%; March 1990 – 1.3%; September 1990 – 1.3%; January 1992 – 1%; December 1992 – 1%. Sulfur content dropped sharply over the three years from 1.6 to 1%. This compares to what we've got proposed today of 2.28% sulfur. Sorry, I'm taking some medicine that dries me out. How does the 2.28% sulfur compare to current limits for Virginia's power plants? According to DEQ sulfur limits range for all power plants in the Commonwealth from .9 to 1.5%. What about sulfur content of the coal actually being burned in Virginia's power plants? DEQ reports that actual sulfur content in 2005 and 2006 ranged from .73 to 1.4%. Of the 44 boilers over 75% use coal that had less than 1% sulfur. Of the remaining, all but two burned 1 to 1.2% sulfur coal. The 2.28% is well over twice the average of what is now being burned in the Commonwealth. Turning now to SO₂ emissions per million BTUs. Again, a look back is instructive. Here are the pounds per million BTU limits originally set for these 5 plants in the early 1990s: .249; .166; .10; .112; and .10; a nice progression downward over three years, a 60% drop. Three of these 5 plants that were permitted in the early 1990s are below what is proposed for Dominion today. Another fair question is: how does the proposed .12 pounds per million BTU limit compare to current actual SO₂ limits in the Commonwealth? According to DEQ data the proposed .12 rate is higher than 2006 actual SO₂ emissions for 5 current coal facilities. The proposed limit is almost, is more than double the 2006 actual emission rate for Altavista and for Clover. Let's now look at mercury. Essentially the same process was used for mercury as it was for SO₂. The 98% removal efficiency was identified at a Florida plant and applied to the coal proposed to be used by the Company. There was any part of the coal proposed to be used by the Company, it was that with the highest mercury content; .5, excuse .51 parts per million. This produced a limit of 71.93 pounds per year. The coal burned in the Florida plant had mercury content not of .5, but of .05 parts per million or one tenth the level used to set Virginia's limit. Two weeks ago DEQ issued a new draft permit for mercury on a MACT basis. The analysis notes the high mercury content of .51 and then states that probably the average or that the average would certainly be less than that. Coal samples from several mines and the average mercury content in coal in Virginia were all averaged together to yield a number of .3511 parts per million. The MACT limit was then established by using the 98% factor and it used the exact same formula used in the BACT situation except substituting the .3511 for the .51. The result is 49.46 pounds of mercury per year. That results in emissions of .9 times 10 to the minus 6 pounds per million BTU. How does that proposed limit compare to current plants? Let's look at Mecklenburg, a plant that's more than 15 years, at least 15 years old. As part of the current mercury study DEQ collected data from EGUs for mercury emissions. According to DEQ in 2002 Mecklenburg mercury emissions were .146 times 10 to the minus 6 pounds per million BTUs. 1.4. That is compared to .9. I'm sorry, .14 compared to .9 for the Wise County project. The Wise County limit will be more than 6 times greater than the actual 2002 emissions from Mecklenburg, a plant of the early 1990s. The ratio is even worse on a pound per megawatt hour basis. The limit for Wise County would be 14 times 10 to the minus 6 pounds per megawatt hour. The 2002 actual emissions for Mecklenburg were 1.7 times 10 to the minus 6. The Wise County limit is going to be more than 8 times higher than the actual emissions from Mecklenburg. Other Virginia coal fired power plants that DEQ reports had lower mercury emissions per BTU; per million

BTUs in 2002 than what is proposed for Wise County include Altavista, Birchwood, Clover and Southampton. Five power plants now have lower emissions in a pounds-per-million BTU basis. Total mercury emissions from all five of these plants for 2002 was less than 26 pounds. About half the roughly 50 pound limit proposed for just the Wise County plant. It is also estimated that by 2010 mercury emission rates for Chesterfield's largest unit as well as James River cogeneration and Cogentrix leasing will all be well below the proposed mercury limit of the Wise County project. That's eight Virginia coal facilities that have or by 2010 will have mercury emission rates far below the limit for Wise County. The total estimated mercury emissions for all 8 plants for 2010 is 49.87 pounds. That's almost identical to the limit for just this one new plant of 49.46 pounds. The total capacity of the eight plants is 2,252 megawatts compared to the Wise County's 664 megawatts. I lay all this out because coal matters. Quality of coal matters. We have seen that when we have low BTUs, high sulfur and high mercury and that coal is burned emissions go up even if you have relatively high recovery rates. Virginia and federal law are clear. Cleaner coal must be considered and that is true even if some adjustment in the design of the facility is required to accommodate the cleaner coal. The Seventh Circuit made that clear last year. Here, no consideration has been given of cleaner coal. Eliminating waste coal or lowering and requiring low sulfur coals, including Virginia coals must be considered. Requiring lower mercury content and higher heat content must be considered. Such consideration is required not only by the Clean Air Act, but by our own 1307 E 4 that requires us to consider the scientific and economic practicality of reducing emissions. Let's look briefly at Virginia coal. At our last meeting staff was asked to give us information on Virginia coal and we have received that. Staff based their analysis on the USGS national resources data system, the best source of which they are aware. The Virginia data includes detailed information on coal from over 450 sources in the Commonwealth. Based on this staff analysis there appears to be much Virginia coal that is far superior to what is proposed by Dominion. Heat content from the 450 sources range from a low of 9640 BTU per pound to 15,156 with an average heat content equaling 13,500. None of the 450 was as low as the 7800 BTUs per pound coal proposed by Dominion. Mercury content from the 450 sources ranged from .01 to .81 with the average being .12. The Dominion permit is based on mercury content of almost three times that amount. The DEQ staff report states that sulfur content in Virginia coal range from .4% to 6.61% with the average being 1.2%. Dominion's 2.28% sulfur coal is 90% higher than the average based on the staff's analysis. Of the 450 samples, the data on only 53 of them or about 10% had sulfur equal to or greater than the 2.28%. Much environmental progress has been made here and elsewhere by requiring new plants to be cleaner than their predecessors; to require higher quality coal and higher quality technology to reduce emissions. The average improves over time because the additions of the new cleaner facilities and the retirement of older dirtier plants. The opposite is true here. This plant would burn lower quality coal and, as a result, emissions would increase compared to certain older plants. Specifically, the coal burned here would have less than half the BTUs and about double the sulfur per pound compared to the vast majority of the coal currently being burned in Virginia's power plants. That means, for example, four times as much sulfur going into the boiler. As for emissions, looking just at SO₂ and mercury, we see that emissions would increase drastically compared to a number of current plants that have been in service for many years. For example, by the time this plant would begin operation eight Virginia plants will have mercury emissions far below what is proposed for Dominion. The new plant could emit as much as all eight of the others combined. Five plants have SO₂ emission rates below the .12 pounds per million BTU that is proposed for Dominion. Rates at two of those plants are less than half the limit. The Forest Service provision

of the draft permit should reduce emissions below the .12. However, not all of the reductions required under that section have to be actual stack reductions. Actual emissions for rates for Altavista and Clover would be less even if all the Forest Service reductions were actual stack reductions. The fundamental problem with the application and analysis is that they are too restricted and are focused on the wrong goal. The goal is not technology and high removal rates. It's not just about technology. The ultimate goal is low emissions. That should be our polar star. High technology is a means to achieve the goal, but it must not become the goal. As we have seen with sulfur and mercury clean fuel is often also required. Of course looking just at cleaner coal and coal quality is just the beginning. I've looked only at sulfur and mercury. A complete analysis including consideration of cleaner coal must be performed for each pollutant. That has not happened for a single pollutant because the Company's fuel was always a given. Also, I have not discussed other issues that include for example coal cleaning, Virginia coal limit, CO2 and alternatives such as pulverized coal and IGCC. A number of important issues have also been articulated by commenters including the National Park Service, the Southern Environmental Law Center and the National Parks Conservation Association. These and other issues must be properly addressed. It is important that this Board and Virginia recognize that this plant would reverse Virginia's long term trends of improving what goes into the plant and decreasing the emissions that come out. Virginia needs to know that dirtier coal is going to be burned and, as a result, emissions will increase. That's what will happen with respect to the two substances I was able to example. We need to know those facts for all of the pollutants and if there is a good reason to increase emissions, we need to know what it is and be presented with studies and analyses that justify that decision. It appears to me highly unlikely that the proposed permits could survive appellant scrutiny at either the state or federal level. I do not know what the final decision should be with respect to the Wise County project. I do know that cleaner coal must be considered. I know that alternatives must be considered. For months I have asked questions and consulted with DEQ staff and asked the Company to expand their analysis and rethink their proposal. I have refrained from acting hoping that the Company's proposal would be changed or fully analyzed as required by law. This has not happened. The Board must now assume the authority and responsibility for the Dominion Wise County applications. In the long run I believe this action will save time compared to starting over after an appeal. Accordingly, I move that the Board assume authority and control of the permits for the Dominion Wise County project. If this motion passes, there will be separate motion regarding next steps.

THOMSON: I second the motion.

LANGFORD: We have a motion and a second for the Board to, would you read the motion again for me please?

MOORE: This one's short.

HANSON: Yeah, don't start at the top.

MOORE: I move the Board assume authority and control of the permits for the Wise County project.

LANGFORD: A motion to assume the authority and control for the permits for the Dominion Wise County project.

MOORE: That's correct.

LANGFORD: Is there discussion on this? Mr. Buckheit.

BUCKHEIT: A couple of other matters to point out. In the past two months the state legislature has passed a revision to the permitting procedures that govern this Board. In the past it was entirely discretionary on the Board to decide whether to take up a particular permit. In the future, if I understand this right, anytime 25 or more persons petition DEQ to have the Board take over a permit, the Board must take it over. This provision is not technically effective today, but I'm advised that something between 1,500 and 2,000 persons have in fact written in to DEQ requesting that the Board take over the permit. Under these circumstances I think it would be an insult to the legislature for us not to take over the permit. In addition, I think public policy cries out for this. I going to take this from the mine mouth level up to about 50,000 feet for a couple of minutes. The decisions about which type of coal fired power plant should be employed in Wise County and that's what we're talking about. We're not talking about whether to have a coal fired power plant in Wise County. We're talking about which type of coal fired power plant and what emission limits would be appropriate for that type of power plant must be, ought to be made by the government. Dominion certainly has a right to their private property and how they exercise it. However, there is no cork for the stack such that the emissions from the plant will not inevitably affect all of the rest of us. Further, under re-regulation all the rest of us will bear the costs for this plant and so the shared decision making that goes on. Dominion for their part has proposed and advocated, but the government in the end needs to make decisions that while respecting Dominion's rights and their ability to make a profit protect the health and well-being of all of us and so let me put in some terms the scale of the decision. I believe that the decision in front of us has the potential to reduce greenhouse gas emissions from this facility which will be one of the larger facilities in the state by 25 to 30% over the next two generations depending on how we go forward. There are three basic technology trails to follow. Some folks advocate for IGCC, integrated gasification combined cycle. This type of a system you turn the coal into a gas and then you burn it, the gas, and you hope, one benefit by the way is a smaller volume of CO₂, and you hope, if you're applying this technology that the infrastructure will be there several decades down the road to pipe these gases in a high pressure pipeline system all over the country to mines and other locations and again hope that the technology will be cost effective to the point that it makes sense and there are several recent studies, high level studies, that document the very high technology challenges and costs issues associated with following an IGCC trail. Nonetheless, while I'm skeptical that that will make sense, it needs to be considered. The second path is the path suggested by Dominion which is a CFB plant. What got my attention very significantly in recent time is when I asked Miss Faggert for heat rate for the CFB plant and I was advised that it's nominally 10,000 BTU per kilowatt hours. While that's about the same as the heat rate for the 1947-1948 Mirant plants and what we're talking about here basically is the fuel economy of the plant. So we're talking about two plants that get 15 miles per gallon. If we look at what a high efficiency coal fired plant would get, my steam book tells me that 7,400 to 7,200 BTU per kilowatt hour is achievable and so with using basic coal technology, not sort of technologies that we hope come true in the future, it may be that we can reduce the CO₂ footprint for that area served by the plant by 25%. No one has to change a thermostat. No one has to go cold. No one has to forego air conditioning. Just like that. But the analysis gets even more interesting, because we're not just interested, I mean we are just interested in the CO₂ from fossil fuels. Then we go to a methane that would be burned by burning renewables in the CFB as

proposed Dominion, especially if Dominion were to work on improving the efficiency of that CFB, could well wind up with a situation where the CO2 footprint of that CFB plant that Dominion is proposing might be better than any of the alternatives. Might easily be better, if we made one simple change to the permit and that would be to require a minimum renewables content. Okay, so in my mind we're not talking about there must be IGCC. We must go back to the treetops. No one's allowed to drive cars, etc. We're talking about starting today to make smart decisions, working with the companies, so that the interest of the Commonwealth are served going forward. I don't think that any of this is all that hard. I'm hopeful as we get to later on that we can get to a schedule where we can get the kind of analyses done that needs doing so that we all can make smart decisions and I hope we can make those decisions with Dominion. Having said that, up til now the mantra has been we can't consider the public interest. We can't consider, we're not allowed to consider under Virginia statute or under BACT these kinds of, I would say, big picture, but simple improvements. You know as I go forward in my life I try to figure out how I am I ever going to get to the kinds of numbers of CO2 reduction that people are talking about. Well if you do this one step of a 25% reduction here and the second step which I'm also cooperatively with Dominion on of trying to improve insulation in all its residential user efficiencies, we've got 50% could be done in the next several years for this subset and I think it could be done without a lot of pain. I don't know this, but I've obviously thought about it some and what I think needs to happen is that we need to engage in this kind of analysis. I think we'd be entirely foolish for us not to think about should we have a minimum renewables requirement. Should we not look at what is the most fuel efficient? Every time we go down to the Home Depot or whatever and you go to buy an appliance, you have a series of choices. Do you buy the energy star version? Do you pay a little extra money for the extra energy efficient air conditioner? In the past year I'm told that the price of Appalachian coal has gone up 93%. So if we go for improving efficiencies and we look at what's feasible, I mean we have issues that are these sustainable to rip all those trees off the mountain and throw them in the power plant, we have to look at that; it just seems to me that it makes all good common sense to undertake this effort. Thank you.

THOMSON: I will vote today to take over authority on this permit and this is why. An extraordinary number of comments, 5 to 6,000 I'm told, have been received on this permit. I've read some of the comments and they've raised substantial, disputed issues. Some of those issues are that the BACT analysis has not duly considered all available control technologies starting with the most stringent available and including, but not limited to, IGCC, low sulfur coal and a wet electrostatic precipitator; that the BACT analysis must be reexamined in light of the fact that MACT controls are not required for hazardous air pollutant emissions from facilities and those pollutants include mercury and benzene; potential harm to public health and nearby Clean Air Act Class I areas including the Great Smoky Mountains National Park in North Carolina; and greenhouse gas emissions which are estimated at 5.4 million tons a year. As regards greenhouse emissions we should recall that the Governor of Virginia has set forth an energy plan that calls for reducing greenhouse gas emissions in the Commonwealth by 30% in 2025 bringing emissions back to 2000 levels. With respect to hazardous air pollutants, because of a recent court decision, power plants no longer enjoy a special exception from the Clean Air Act provisions and we must ensure that MACT and BACT requirements are developed in tandem. The emissions from this facility will spread far and wide. There will be local effects. There will be regional effects and global, as well. Because of the emissions' broad reach we want to make sure that the Clean Air Act's requirements

for BACT and MACT are appropriately met. Here we sit in densely populated northern Virginia, the issue of environmental justice was mentioned earlier today and it applies here as well. I feel a special responsibility for sparsely populated rural Wise County where according to the U.S. Census median household income is 60% of the statewide median household income and the poverty rate is 19.5%. That's compared to the statewide rate of 9.5%. We all know that poor health is often correlated with poverty. In summary there is significant public interest in the permit as evidenced by the thousands of comments received, many of which have asked us to take over authority for this permit and these commenters have raised substantial disputed issues relevant to the permit. That's why I will vote today to take over authority of the permit.

HANSON: Hullie, you and others have raised serious and substantial questions about this permit. My question to whoever would like to answer it, either on the panel or from the staff is: why can't these issues that are being raised be handled in what I will call the normal course. That is, without us taking over the permit. Why can't we work this out with the staff?

LANGFORD: Would staff like to address that, Mr. Paylor, Mr. Dowd or anyone? It's a question I was curious about as well. Some of these things have happened fairly recently and have required to go back from what was originally thought of as the permit and do some other stuff as you alluded to. Where are we in that process and I guess can this stuff be handled in the normal course?

PAYLOR: We are in the process, Rob or Dallas if I miss anything you can fill in, we're in the process of finalizing our response to all of these comments raised. We're a week or so away from actually having a complete analysis of that. I'm confident that there will be answers to many of the questions that you've asked. Whether or not they're answered to your satisfaction is unclear, but all the questions that have been raised we'll have answers for. I am given assurances by the Company that any questions that are raised by the Board today they will provide quick and thorough answers to within 30 days. So it's difficult for me to say having not seen the final response to comments whether or not all of the things you've raised today will have been addressed.

BUCKHEIT: Do you think under your current policies and your views of what's appropriate in permitting that DEQ is prepared to undertake the analysis that I've suggested and direct and issue a permit that would direct the Company to, for instance, change to a PC unit if that's what the analysis showed?

PAYLOR: I believe that you've raised some issues that we would consider to be broader than the analysis that we have undertaken

LANGFORD: To date.

PAYLOR: To date and our view of the appropriate application of this permit is to process a permit for the technology that has been proposed and not to require a redesign of the project. Some of the things that have been suggested by Board members today would, as I understand it, call for a redesign of the project and as such that would be outside of the normal analysis that we take and in fact outside of the analysis that EPA usually takes in terms of how process a permit application.

MOORE: Mr. Chairman.

LANGFORD: Yes, go ahead.

MOORE: Mr. Paylor. I propose that we take it over. I would have preferred to say that we won't take it over, but we will direct DEQ to do this analysis for this, that and the other and I would prefer that, but I think at one other occasion I had understood that if the Board was going to do that, you'd just as soon we take it over. It's fine with me. Would you have a problem for example looking at and doing an analysis for cleaner coal even if it's just in Virginia?

PAYLOR: I certainly don't have a problem with doing that analysis or any analysis. I would remind you that we have been in part guided by the will of the General Assembly in 2004 relative to the coal sources and our analysis of that would take that into consideration.

MOORE: But, I'm saying Virginia coal for right now. I think that's all it requires.

HANSON: Let me, if I may, ask another question. Let's go the other way with my question and that is, excuse me, if we did take the permit over wouldn't we be asking the staff to do a whole bunch of stuff anyway.

MOORE: Absolutely and if I'm not, I'd be terribly surprised if we approve this that someone down the road here isn't going to make a motion as to ask the staff to do a series of things and provide us that information.

BUCKHEIT: Right, but I think what the crux of this is, I, and I think Mr. Moore, have articulated a policy view that is different from the historical policy view that DEQ would employ in issuing a permit of this nature. We will all as we go forward examine what authorities we have, etc., etc., but I think I'm hearing that DEQ would rather not have us force them to change their permitting policies. They would rather have us.

PAYLOR: Perhaps maybe I could redefine that a little bit. You set the policy for the Commonwealth in air and you do it through certain practices like policies and regulations and we intend to follow the law and the policies and regulations as they're set forth and as we understand it. With the questions that Mr. Moore asked at the last Board meeting, I think you'll recall that one of my questions was to whose satisfaction and that question still remains in my mind and one of the things we are challenged with is guessing what's in your mind and so we need some certainty as well.

LANGFORD: I think that's part and parcel on some of the discussion leading up to the General Assembly action that Mr. Buckheit referred to in terms of changes to the environmental boards and Mr. Buckheit is correct, at least I agree with his assessment that given what I believe the law to be effective July 1 that this permit would come to this Board for final decision anyway and in that regard I somewhat think that motion is a little bit moot other than the fact we've got three months between now and July 1. There'll be some procedural changes in how that comes before the Board effective in July and I think Ms. Berndt is still trying to help figure out exactly how that is going to work and I think there's some discussions about how to educate Board members on how those new procedures will take effect. It's very clear to me that undertaking the kind of analysis that I think is being suggested either by Mr. Moore or Mr. Buckheit is going to take some substantial amount of time to do thoroughly and I believe I agree that it is probably outside of the normal realm of

what would be considered in doing these permits. So I'm kind of personally at a loss to see where we need to go with this either now or after July 1 to get a resolution. Did you have thoughts on that Mr. Paylor or not yet? Not yet. Okay.

PAYLOR: Let me just say in terms of whether the Board assumes purview of this permit or not if the permit is left within the domain of the staff, we will exercise our best judgment based on the laws, regulations, policies, directives from you, as well as consultation with our counsel and we'll make a decision on that. If you want that decision to be reviewed by you before it's made, then I believe that you have in effect taken the permit and should so state.

LANGFORD: Okay. Other discussion on the motion?

MOORE: Let me ask Mr. Paylor a question. On just the simple issue of considering cleaner coal, coal with lower sulfur content, higher BTUs, lower mercury, from Virginia, if we take this over and we ask you to do a study and tell us the scientific and economic practicality of doing that, I assume the staff would not have a problem doing that?

PAYLOR: None whatsoever.

MOORE: Okay.

LANGFORD: In what time frame could that be accomplished?

PAYLOR: I think I would prefer to answer that question after I know

MOORE: The list.

PAYLOR: Although as I said before, the Company has represented to me that whatever the questions are, they'll do their part to get the answers to us within maybe as short as 30 days.

LANGFORD: Get some information to you on their position and you all would evaluate it.

PAYLOR: We'll certainly throw our resources into it to make sure it's as soon as possible.

HANSON: Could I ask Hullie's question the other way? If we don't take it over, but ask for that same study, would the answer be the same?

PAYLOR: Yes, the answer would be the same. We would do whatever study you asked, but what I meant to communicate to you in one of my earlier statements was that we will do that analysis and we will apply the laws and the regulations and confer with counsel and we will make decisions on what the best way to use that information is in making a decision and if you're satisfied that then we are as well. But if, in fact, you want the review of that analysis before it's done, then what I'm suggesting is that effectively you've taken the permit and I think you should do so.

MOORE: Let me ask one more. Mr. Paylor, and so for example if we asked you to do a study just on cleaner coal, I think there are a number of issues, and we just asked you to do it, you would do it, but if you came to the conclusion that you didn't think that should be considered, you'd do the study, but you would issue the permit

HANSON: without requiring cleaner coal

MOORE: without considering the cleaner coal.

LANGFORD: No, with considering and deciding that it wasn't

BUCKHEIT: No, I think Mr. Moore's question is that if they think that under the law they're not allowed to

MOORE: they're not allowed to

PAYLOR: We would do what we think is appropriate under the law, yes.

LANGFORD: Okay. Does that answer the question you had?

MOORE: I think it does. I think we either take it or he has it and I think that's fair.

BUCKHEIT: At one point in a moment of frustration it was suggested that the Board was trying to have it both ways and that's not the case.

MOORE: And that's the reason why I made the motion I did, the way I did. We shouldn't have it both ways.

LANGFORD: Okay. Other comments from Board members?

BUCKHEIT: I think this gentleman had something he wanted to offer and I would like to hear it I suppose. We're talking about their future.

MARTIN: I'm Jim Martin with Dominion and if you reviewed your package, there is an analysis of the fuel study that you're asking for.

MOORE: Is that the one that has the .75% sulfur coal?

MARTIN: This is a brand new submission. It's the study that was just prepared for the questions that were raised.

MOORE: I saw the coal section and I believe the cost study part had, I think it had .75% sulfur coal.

MARTIN: It has a full blown analysis of the mines in the seven county region.

LANGFORD: Mr. Martin, can you point us to, you said we have it in our package and I've gotten all kinds of packages recently.

THOMSON: It was in the email.

LANGFORD: In the email. Okay. I'm just trying to figure out which one I was supposed to be looking at.

HANSON: Let's say we have the information, but I guess isn't the fundamental question whether the agency, the staff, with this information will; do they believe they have the prerogative to, for example, issue a permit and require the use of cleaner coal? Who can answer that?

BUCKHEIT: I think as of this point in the draft permits that we've seen that the DEQ has put forth as their suggested permits, they have not required the use of cleaner coal.

HANSON: Right, but now I understand this analysis.

BUCKHEIT: That particular analysis is, but there have been comments from the Forest Service and others about the availability of cleaner coal.

HANSON: All right, but if we want the permit to say, just as a hypothetical, I'm not prejudging anything, if we want the permit to say you've got to use cleaner coal

BUCKHEIT: That's up to us.

HANSON: Does the staff not think it has that prerogative at this point?

BUCKHEIT: They haven't thus far suggested that.

HANSON: Even if that's our policy.

LANGFORD: That's a fair question Mr. Buckheit.

HANSON: If we say today, it's our policy that we want the cleanest coal that's feasible to be used, Mr. Paylor, can the staff having heard that policy, can the staff look into that and put it in the permit?

LANGFORD: A new policy or an existing?

HANSON: I understand from Mr. Paylor we can make policy any time we want to.

PAYLOR: According to processes set out by law, yes.

HANSON: Right.

MOORE: Is this exhibit; is the study you're speaking of exhibit 7?

MARTIN: Yes sir. It responds to the National Forest Service questions.

MOORE: And that's 2 pages, right?

MARTIN: No, and then there's a Q& follow-up on that.

MOORE: All right.

MARTIN: If you have any questions, most of my life was spent in the mining industry and I'd be happy to address some of the questions you all have raised. There's a lot of misperceptions about what clean coal is or coal cleaning is. When you put coal through a prep plant, you do not change the sulfur content of the coal. You change the BTU and ash content of the coal. So the suggestion that we're going to somehow put this through a prep plant and change the sulfur content is misperception.

LANGFORD: And your comments are directed to the fact within the seven county, I think you said, seven county area that is the .75% sulfur coal is available, but it has to be cleaned.

I'm not sure I'm following the gist of that last comment with the rest.

MARTIN: Well, what concerns me is that it's clear that this has not been reviewed by the Board and you all are then going to ask for questions, if you do take this over, without even having bothered to review what was in here. We're prepared to answer

BUCKHEIT: Sir, maybe I made a mistake asking you to stand up there. Nobody is going to ask you to repeat work. We're going to talk to the staff and we're going to figure out a plan to put together I would hope a draft permit in time to be sent out for public comment at our May 20th meeting. That would be my goal.

THOMSON: We will certainly review the information you have presented along with all the other information that's presented to us, but we still haven't heard the answer to Mr. Hanson's question to Mr. Paylor.

PAYLOR: You're probably going to have to refresh my mind about the question.

LANGFORD: If you'd like, I can try to refresh it.

PAYLOR: Let me give an answer and you can tell me if it's on point or not. As the gentlemen has stated, we've gotten some information about their analysis of clean coal. I'm at a little bit of a disadvantage because we haven't finished reviewing all of the response to public comments and so I haven't been briefed on precisely what the scope of all of that is. I am advised that in some sense much of the coal source choice is in fact integral to the project and that would be part of any analysis that we will do at the staff level because

BUCKHEIT: It's on an old mine site.

LANGFORD: You're referring back to the legislation I think.

BUCKHEIT: The legislation said that the plant needed to be in one of seven counties and use Virginia coal. It didn't say that you have to use coal from one of seven counties.

PAYLOR: Let me just say, maybe I'll just rephrase my answer to say that we would certainly consider clean coal options and things like that that did not, in our view requiring redesign of the facility is outside the scope of the way we process applications and so if any of those things required an extensive redesign of the facility, then we would in fact probably, the way we have operated in the past, would not require that.

LANGFORD: All right. Other comments from Board members? We have a motion and a second. Mr. Moore if I could borrow your piece of paper to read the motion, it would be helpful?

MOORE: I don't know where it is.

LANGFORD: Just the last page.

MOORE: I move. I know it's here. I move that we take over the permits

LANGFORD: No, there were some other words in there and I want to get it right.

BERNDT: The authority and control.

MOORE: the authority and control for the permits for the Dominion Wise County project.

LANGFORD: There's a motion and a second for the Board to take over the authority and

BERNDT: control

LANGFORD: control for the air permit

BERNDT: permits

BUCKHEIT: two permits

MOORE: two permits, you've got a MACT and a BACT.

LANGFORD: Thank you. See that's why I wanted it in front of me

BERNDT: He's buried it again.

HANSON: Start at the top and read that speech again.

MOORE: I do have it right here.

LANGFORD: Let me have it.

MOORE: Accordingly I move, it's a line and a half,

LANGFORD: A motion that the Board assume authority and control of the permits for the Dominion Wise County project has been moved and seconded and discussed and short of any further discussion I'll call for the vote and I think that we'll do this by voice again. Mr. Buckheit.

BUCKHEIT: Aye.

LANGFORD: Mr. Buckheit votes aye. Ms. Thomson.

THOMSON: Thomson aye.

LANGFORD: The chair will abstain.

HANSON: Nay.

MOORE: Yes.

LANGFORD: Chair changes his abstain to a nay. Since I hadn't announced the results yet. So motion has passed 3 to 2. Are there anything else we need to do on this item?

MOORE: I think Mr. Buckheit has a motion.

BUCKHEIT: I'm not sure it's a motion. I think what we need to do is just a short discussion. We'll sit down and visit with whoever your lead staff is to figure out what we'd like to see by way of analyses and work with Dominion to make sure that we're not asking for things that are impossible to do and we're not seeking to duplicate effort.

Again it would be my hope that we could have sufficient information to put together a proposal that would be voted up or down to go out for public comment at our May 20th meeting.

FAGGERT: Could we ask a question?

LANGFORD: For the record just identify yourself please.

FAGGERT: My name is Pam Faggert. I'm environmental officer for Dominion. We have a question with regard to the permits. As you mentioned there are two permits, the permit you're discussing today and then a mercury MACT permit which is scheduled for public comment, public hearing and public briefing are scheduled for April 3rd and we would ask a clarification as to the status of that briefing.

BUCKHEIT: I would assume you're asking whether that comment period should go forward.

FAGGERT: Yes sir, I'm asking that.

MOORE: Absolutely.

BUCKHEIT: Yes.

LANGFORD: Okay, so there's nothing in that permit that the Board wants to review or do anything about short of, it's out for public comment now, is that what I'm hearing?

BUCKHEIT: It's out for public comment now.

FAGGERT: We are in the 30 day period.

BUCKHEIT: Right. I understand. We don't, let me just say what the issues are. The central issue is establishing the MACT new source floor. Okay. So we will be asking staff and you to do a reasonable inquiry to look for, ask EPA, but look for, not just the RACT/BACT/LAER clearing house, but reasonably available data concerning mercury performance, the other HAPs that need to be regulated; it's not just a mercury MACT, there's a utility MACT for existing sources; so we can set the floor at the rate achieved by the best performing similar unit. I assume, I have not followed the MACT permitting, but obviously that question has been put out for public comment. I don't see any new issues on the MACT side of things. I see asking some different questions as to how we might evaluate the performance of the CFB compared to potential options. So we'd be looking at what is the CO2 footprint so high efficiency PCs, etc. and try to figure that out so we can compare it and see if we can set a standard that will be equivalent to what can be achieved with the different technologies. So that's what we'll be working with staff on. But again, I don't see any new issues on the MACT side of things.

FAGGERT: Okay.

LANGFORD: Okay.

PAYLOR: Mr. Chairman.

LANGFORD: Yes Mr. Paylor.

PAYLOR: It would be helpful and I think we have some guidance in terms of the concerns from Mr. Moore's and Mr. Buckheit's statement, but if it would be possible for the Board today to detail any further of the kinds of analyses that we need to do that would be helpful too. I think, both for us and the applicant.

LANGFORD: Do any Board members want to do further detail beyond your previous statements about additional analyses that you expect from staff?

BUCKHEIT: I think what I would like to do is to see if I could have a conference call with whoever your assigned staff is and we can talk these things through, figure out what data sources are available, what's the practical way to do that and then maybe could have a separate conference call with Mr. Moore to pick up his issues and any other members that might want to have their own separate conference call to do that. I think it would benefit from some give and take to understand what's feasible, what's doable, what's asking for the moon rather than just arbitrarily setting out lists.

RISPIN: Mr. Chairman, may I address the Board?

LANGFORD: We're in the middle of a discussion here. So Mr. Paylor.

PAYLOR: A question I would ask is if we are able to understand and address the concerns that Mr. Moore and Mr. Buckheit raised in fairly short order would it be the will of the Board for us to move ahead with public notice in advance of the May 20th meeting or do you want to

LANGFORD: Public notice of what?

THOMSON: Public notice of what?

PAYLOR: Public notice of a revised permit, if, in our analysis we come up with a proposed revision to that permit would it in fact be appropriate for us to move ahead to public notice with that revised PSD permit in advance of the May 20th meeting or do you want to see.

THOMSON: I'm uncomfortable with that. I would rather have us look and talk it through and be comfortable with it before it goes out for comment. I guess I'd also flag on the MACT issue, certainly getting public comment on what MACT is, I don't want to interfere with that process. I want to let it go forward. Some of the substantial issues that were raised were making sure that the BACT determination is completely congruent with the MACT determination. So I know that that issue is out there. It's not a new one. So while not wanting to interfere with the process I will just articulate that as something that is very much on my mind.

BUCKHEIT: I anticipate the question coming. I think this is SELC, isn't it. We will try to find a way to make sure that you can input whatever. The questions put to say Dominion and others will not be private questions. We will make sure that there is a way that everyone knows what are the questions we're asking so that everybody can provide their answers to those questions.

RISPIN: My question was actually about the MACT.

BUCKHEIT: Mr. Chair.

LANGFORD: Is it germane to this topic?

RISPIN: Yes.

LANGFORD: Briefly raise it. Just identify yourself.

RISPIN: Sarah Rispin. I'm staff attorney with the Southern Environmental Law Center. This is germane to the interaction of MACT and BACT and whether or not we, excuse me, you want to go forward the comment period on the MACT permit. We think that the MACT permit as drafted, which was drafted in 15 days, contains a lot of the same deficiencies that were pointed out by Mr. Moore even with respect to the non-consideration of the even basic cleaner coal option so to fully respond to the MACT permit as drafted given the policies that you have expressed today might be an exercise in futility. We are happy to provide you with information on MACT/BACT that has been done for coal fired power plants to date, but the draft permit as it stands now is hardly the best jumping off point.

THOMSON: I guess I wanted to let the process move forward and receive comments on what's out there. It would give you the opportunity I think to articulate as specifically as you possibly can the deficiencies of the MACT permit and then we can take a look at the two together. I would like to let it go forward. I would also like to express my interest in being involved in follow-up discussions on the kinds of analyses and questions that I would like to ask and that the staff think are doable. So I would like to put my order in there.

BUCKHEIT: And what I'm suggesting is you would do that one on one with the staff rather than having meetings.

LANGFORD: I fully concur with the Vice-Chair's comments. I think its best served to go ahead with the MACT comment period so that everybody can get their comments in. If we stop that thing, then a lot of people who had substantive comments they might want to consider might not put those in and then they wouldn't be in the hopper when we redid the whole thing. We finish the other comment period and got a bunch of comments. We need to finish this one as well and then obviously both those permits will be reviewed by the Board.

BUCKHEIT: And it's very likely that MACT will overtake BACT on a number of areas and I don't know why, and this is not a decision, but I would assume the smartest thing to do would be at the May 20th meeting to put out a combined proposed permit.

LANGFORD: Mr. Paylor, do you have adequate directions that you're having five different individual people telling you which way to go, potentially five, at least three.

PAYLOR: I know of three who have expressed interest. If you or Mr. Hanson would like to have a conversation, we're certainly available and will schedule that next week.

LANGFORD: Just as the chair, I'll reiterate and expand a remark I made earlier. I think this is part and parcel of why some of the changes needed to be made in the environmental board bill. It is very difficult for staff to deal with three independent, individual directors, if you will, of how things should go and they all can't sit in the same room at the same time, so it's almost an untenable situation and for one reason that's why I'm looking forward to July 1 so we can help streamline the staff work hopefully somewhat. So you've got your input. Are there other discussions? Did you say you

had a follow up?

MOORE: No I thought we were, but if we're going to use this method, that's all right.

LANGFORD: Then it appears that the discussion of the Dominion Resources Virginia City Hybrid Energy Center, item II on the agenda, is now complete.

[NOTE: Next Board meeting date was changed to May 22, 2008]