

TENTATIVE AGENDA AND MINIBOOK
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, MARCH 26, 2010

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

Convene – 9:30 a.m.

			TAB
I.	Review and Approve Agenda		
II.	Presentation to Richard D. Langford		
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IV.	Standing Rules and Procedures		
V.	Particulates in Roda - Status Report	Bazyk	
VI.	Petitions Fugitive Dust Petition	Sabastanski	B
VII.	Air Division Director's Report Mirant PRGS - Status Report Green House Gas Regulation ODEC - Update	Dowd	
VIII.	Royal Fumigation, Suffolk - Status Report	Nold/Turner	
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X.	Public Forum		
XI.	Other Business State Advisory Board Appointments Legislative Update UVA Green House Gas Project	Dowd	D

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration. For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia

Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS (issuance and amendment of permits)**, the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held. In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

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

CASE DECISIONS: Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented at the public hearing or during the public comment period up to 3 minutes to exercise their rights to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a **FORMAL HEARING** is being held.

POOLING MINUTES: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

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

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

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

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: cindy.berndt@deq.virginia.gov.

Standing Rules and Procedures of the Virginia Air Pollution Control Board

I. Schedule, Time and Place of Meetings

A. Regular meetings of the Air Pollution Control Board ("Board") will be held at least four times a year. The schedule of meetings for each calendar year shall be adopted at the last meeting of the prior calendar year and may be amended at any time during the year as determined to be appropriate by the Board. Regular meetings will normally begin at 9:30 a.m. in the General Assembly Building or at DEQ offices at 6th and Main Streets in Richmond; provided, however, that meetings may be held in other parts of the state at times determined to be appropriate by the Board for the circumstances. Regular meetings shall not extend beyond 5:00 p.m. unless extended by a majority vote of the Board.

B. If the Chair, or Vice Chair if the Chair is unavailable or unable to act, in consultation with the Director of the Department of Environmental Quality ("Director") finds that the weather or other conditions are such that it is hazardous for Board members and the public to attend a regular

meeting, the meeting shall be postponed. Notice to Board members, persons with matters before the Board, the media and the public will be provided as quickly as possible. The Chair shall establish a new date for the meeting upon consultation with other members and the Director. C. Additional meetings of the Board shall be held as determined to be necessary (1) by the Board, (2) by the Chair in consultation with the Director or (3) upon the call of any two members of the Board. The Chair shall establish a date for the meeting after consultation with other members and the Director. In the case of an additional meeting called by individual members, the date of the meeting shall be not less than two weeks after the date that the call is received. Any call for an additional meeting by individual members of the Board shall be in writing or by e-mail, addressed to the Chair and the Director, and shall specify the purpose of the meeting. No matter not specified in the call for the meeting shall be considered at that meeting unless all members are present and consent to the consideration of other matters.

II. Conduct of Meetings

- A. The adoption of these Standing Rules and Procedures is for the sole purpose of providing for orderly and efficient meetings of the Board and shall not be deemed to create or bestow on any party substantive rights or duties. Failure of the Board to adhere to the rules governing conduct of meetings shall not affect the validity of any action taken by the Board.
- B. For any meeting, a majority of the members of the Board shall constitute a quorum. If a quorum has not been achieved within one-half hour from the time that the meeting was proposed to begin, then the meeting shall be deemed to have been canceled; provided, however, that the Chairman may extend the time to two hours if one or more members sufficient to make the quorum has indicated that they will be present by the revised start time.
- C. The Chair of the Board shall conduct the meetings and shall rule on the interpretation and application of these standing rules. Any member of the Board may appeal from a decision of the Chair interpreting or applying these standing rules. Such an appeal requires a second and will be determined by majority vote.
- D. The Vice-Chair shall preside over meetings of the Board in the absence of the Chair. In the event that neither the Chair nor Vice-Chair of the Board should be in attendance at a meeting where a quorum is nonetheless present, any member of the Board may call the meeting to order, and the members present shall elect a Chair pro tempore to preside over the meeting until the Chair or Vice-Chair arrives.
- E. Members of the Board must be recognized by the Chair before proceeding to speak. After being recognized by the Chair, a member of the Board shall not be interrupted during the time allowed for him to speak, except when a point of order is called or when being requested to yield the floor by another member.
- F. No member shall hold the floor longer than five minutes without yielding to another member's request for the floor. These five minutes do not include time reasonably expended in asking for and receiving information from staff or other presenters.
- G. In debate, each member may speak as often as he or she wishes on any question but cannot make a subsequent speech if any other member desires the floor who has spoken a fewer number of times on the question.
- H. The Chair may participate in the discussion and vote on any matter before the Board without being required to relinquish the chair.
- I. All actions and decisions of the Board shall be made upon the motion of a member, duly seconded by another member and approved by a majority of the members who are present and voting.
- J. A main motion is one that addresses the primary issue or matter that the Board is addressing. A pending main motion is subject to a motion to amend the main motion or a substitute motion which must be germane to and further the same general purpose of the main motion. A motion to amend or a substitute motion must be seconded and is debatable. If approved, the motion as amended or the substitute motion becomes the main motion pending before the Board. Any pending main motion is also subject to a motion to table or to postpone to a subsequent time.
- K. Any question submitted to the Board, including a motion to close debate, shall be determined by the majority of the members voting on the question, unless the requirements of state law specify a greater than majority vote. The Chair shall put the question to the Board for a voice vote, unless otherwise provided by law. Any member of the Board present at the time of a vote who wishes to abstain or otherwise not participate in the vote must affirmatively so state prior to the Board's consideration of the matter or at the time the vote is taken. The Chair shall call for a vote only after determining that there are no more Board member comments or after approval of a motion to close debate. There will be no further discussion or comment on a matter once the Chair has called for a vote. Any member who may not participate in the Board's consideration of a matter under the Conflicts of Interests Act must comply with the disclosure requirements of the Act and not participate in the discussion or vote on that matter. If it appears to the Chair, upon the voice vote being taken, that the members of the Board are divided on any question, he or she shall determine the vote of the individual members of the Board by roll call. A tie vote on any matter defeats the motion, resolution, or issue upon which the vote is taken. No member may change his or her vote on any matter, except through a reconsideration of the vote by the Board. At the conclusion of the vote on each motion, the Chairman shall announce whether the motion has been adopted or defeated.
- L. A motion which has already been voted on may be brought back at the same meeting for further consideration through the adoption of a Motion to Reconsider. Nothing provided herein shall, however, be deemed to prevent the Board from considering at any time a matter or issue upon which it has previously taken action, following such notice and public hearings as may be required by law.
- M. The Chair shall order the removal of any person whose behavior is so unruly or disruptive as to prevent the orderly conduct of the meeting.

III. Agendas

- A. The agenda for regular meetings of the Board will normally include items for (1) review and approval of the agenda, (2) review and approval of minutes from the previous meeting, (3) review and action, when appropriate, on pending regulatory matters, (4) review and action, when appropriate, on pending permitting matters before the Board, (5) a high priority violators report, (6) a status report on anticipated regulatory actions (7) a status report on applications for permits anticipated to come before the Board, (8) a public forum (8) a closed session for consultation with legal counsel or and other purposes authorized by the Freedom of Information Act and (9) other business.
- B. The proposed agenda for any meeting shall be determined by the Chair in consultation with the Director. In addition, any two members may cause an item to be included on the agenda. Such a request shall be directed in writing or by e-mail to the Chair and the Director no less than two weeks prior to the scheduled date of the meeting.

C. Public Forum is an opportunity for any person to present comments and information to the Board regarding any matter within the scope of the Board's authority that is not on the agenda for that meeting. Any person who desires to speak will be asked to provide his or her name and the matter to be addressed. During Public Forum, each speaker shall be permitted to speak for up to three minutes. In the event that the number of citizens' comments should exceed the time allotted on the agenda for Public Forum, the Chair may request that the citizens return at the next regular meeting of the Board or may consult with the Board as to whether to extend the time for Public Forum or schedule a public hearing on the matter being discussed.

IV. Election of Chair and Vice Chair

- A. The Board shall elect a chair and vice chair at the conclusion of the last meeting of each odd numbered calendar year to serve for two year terms beginning on January 1 of even numbered calendar years. Persons holding these positions shall continue to serve after the expiration of their terms until there has been an election and may be re-elected, except that the maximum service of a person in each position is 2 full terms.
- B. The Chair shall preside over the election of the chair by opening the floor for nominations and shall note the nominations in the order in which they are made. Nominations may be closed by the Chair only after assuring that there are no further nominations to be made. If more than one person has been nominated for chair, then the Chair shall request an indication of affirmative votes by members of the Board for each nominee in the order of the nominations. The first nominee to receive an affirmative vote from a majority of the members of the Board present and voting shall be deemed to have been elected. In the event that no nominee receives an affirmative vote from a majority of the members present and voting, the name of the nominee receiving the fewest votes shall be withdrawn, and votes shall be recast. In the event of a midterm vacancy in the position of chair or vice chair, this procedure shall be used to elect a member to fill the vacancy for the remainder of the term.
- C. The vice-chair shall be elected in the manner prescribed above.

V. Board Member Requests for Staff Assistance

Any Board member request for staff assistance shall be made through and coordinated by the Director or designee. After the initial request has been made through the Director, follow up questions or requests for information may be made directly to the staff person assigned by the Director to handle the Board member's request.

VI. Board and Department of Environmental Quality Policies and Guidance

In addition to regulations adopted by the Board, there are numerous documents which provide information or guidance of a general nature to agency staff or the public to interpret or implement statutes or regulations. These documents are generally referred to as guidance documents. The guidance documents which address matters of the Board are available on-line through a link to the Virginia Regulatory Town Hall located on the Citizen Board web page at: <http://www.deq.virginia.gov/cboards/homepage.html>.

VII. Board Assumption of Permitting Decisions

Section 10.1-1322.01 establishes the conditions under which the Board makes a final determination on a permit to be issued under the regulations for the control and abatement of air pollution. The regulatory citation for incorporation of the law into the Board's regulations is 9VAC5-80, Part I. In addition a guidance document has been prepared. The regulation and guidance document are available on-line through a link to the Virginia Regulatory Town Hall located on the Citizen board web page at: <http://www.deq.virginia.gov/cboards/homepage.html>.

VIII. State Advisory Board on Air Pollution

The State Advisory Board on Air Pollution (SAB) shall aid the State Air Pollution Control Board (SAPCB) and the DEQ in meeting its mandate under the provisions of the Code of Virginia by identifying and analyzing air-related issues involving health, environmental impact, and quality of life. The SAB is authorized under the provisions of § 10.1-1313 of the Code of Virginia. The Board-approved State Advisory Board on Air Pollution Charter, as well as information on members and reports, is available on line at: <http://www.deq.virginia.gov/air/sab.html>.

Petitions

Petition for Rulemaking, Fugitive Dust (9VAC5 Chapters 40 and 50) - Public Participation Report and Request for Board Action

INTRODUCTION

On November 20, 2009, the department received a petition from Southern Appalachia Mountain Stewards and the Sierra Club to initiate a rulemaking concerning fugitive dust emissions standards for existing and new and modified stationary sources. The petitioners have requested that additional language be added to the fugitive dust standards to clarify what is meant by "reasonable precautions" and that the fugitive dust standard provide additional examples of reasonable precautions specific to the type of activities that contributed to a documented dust problem. Further, the petitioners state that the proposed amendments would strengthen and clarify the fugitive dust standard without imposing significant burdens on regulators or on the facilities subject to the regulations. Today, the department is recommending that the board deny the petitioner's request for the reasons set forth below.

PUBLIC PARTICIPATION ACTIVITIES

To solicit comment from the public on the petition, the department issued a notice that provided for receiving written comment during a comment period. The summary and analysis of the public comments are attached.

NATURE OF REQUEST

The petitioners are requesting that the board add language to the fugitive dust standards to clarify what is meant by "reasonable precautions," and to provide additional examples of reasonable precautions specific to the type of activities that contribute to dust problems.

REASONS FOR RECOMMENDATION

Below are the reasons for the department's recommendation.

1. The recommendations are not appropriate for the regulations' purpose. The petitioner requests that optional provisions specific to mining in a certain area of the state be added to regulations that are intended to cover a wide variety of sources over the entire state. The Department of Mines, Minerals and Energy (DMME) is the state agency with the legal responsibility and resources for regulating fugitive dust emissions directly related to mining. In contrast, the board's regulations are directed toward a more general federal Clean Air Act mandate to control particulate matter from a variety of sources throughout the Commonwealth. Other, more appropriate means of fugitive dust control not covered by the petitioners' recommendations may exist. In addition, there may be measures more effective for other industries in other areas of the state that are not addressed by the recommendations.
2. The existing state regulations and guidance address fugitive dust by providing a listing that includes, but is not limited to, certain reasonable precautions. A rulemaking to add items to the current list of optional reasonable precautions is unnecessary and the existing regulation provides the necessary flexibility to cover a wide variety of sources over the entire state.
3. Adopting the recommendations would require a full regulatory process, which is very costly in terms of time and expense. Such costs would be borne not only by the department, but by other state agencies as well.

DEPARTMENT RECOMMENDATION

It is recommended that the board deny the petitioner's request for the reasons set forth above.

SUMMARY AND ANALYSIS OF PUBLIC COMMENTS FOR PETITION FOR RULEMAKING CONCERNING FUGITIVE DUST (9VAC5 CHAPTERS 40 AND 50)

INTRODUCTION

On November 20, 2009, the board received a petition from Southern Appalachia Mountain Stewards and the Sierra Club to initiate a rulemaking concerning fugitive dust regulations. As required by law, notice of the opportunity to submit written comments was given to the public on December 21, 2009 in the Virginia Register and the public comment period closed on February 10, 2010; 179 comments were received. The nature of the request is summarized below followed by an analysis of the public testimony, along with the basis for the decision of the board.

NATURE OF REQUEST

The petitioners are requesting the board to amend the fugitive dust emissions standards for existing and new and modified stationary sources. The petitioners have requested that additional language be added to the fugitive dust standards to clarify what is meant by "reasonable precautions," to provide additional examples of reasonable precautions specific to the type of activities that contributed to a documented dust problem in Roda, Virginia. Further, the petitioners state that the proposed amendments would strengthen and clarify the fugitive dust standard without imposing significant burdens on regulators or on the facilities subject to the regulations.

ANALYSIS OF TESTIMONY

Below is a summary of each person's comment and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, the text of the comment and the board's response (analysis and action taken). Each issue is discussed in light of all of the comments received that affect that issue. The board has reviewed the comments and developed a specific response based on its evaluation of the issue raised. The board's action is based on consideration of the overall goals and objectives of the air quality program and the applicable statutory provisions governing the program.

1. **SUBJECT:** Actions taken to address fugitive dust concerns.

COMMENTER: Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (DMME/DMLR)

TEXT: The petition was submitted to address fugitive dust concerns the petitioners attribute to coal haulage activities in the Roda community, near Appalachia, Virginia of Wise County. DMME is the state agency that regulates land-disturbing, mining, and reclamation activities from coal mining operations under Chapter 19 of Title 45.1 of the Code of Virginia and the regulations promulgated thereunder (4VAC25-130-700 et seq.). In addition to the regulatory requirements under the Virginia Coal Surface Mining Reclamation Regulations, DMME has published Guidance Memorandum No. 29-09 to address additional measures that may be employed to address fugitive dust problems in the coal producing communities. DMME has worked with DEQ, the Virginia Department of Transportation, the Virginia State Police, permitted coal mine operators, and concerned citizens to address fugitive dust concerns. DMME and DEQ entered into a Memorandum of Agreement (MOA) on December 9, 2009, to coordinate their efforts to facilitate efficient and effective administration of applicable state and federal environmental laws, regulations, and policies for fugitive dust control on and immediately adjacent to active coal mining sites.

RESPONSE: DMME's efforts to coordinate fugitive dust control activities with DEQ and other agencies and individuals are recognized and appreciated.

2. **SUBJECT:** Requirements and applicability.

COMMENTER: DMME/DMLR

TEXT: The proposed amendments to 9VAC5-40-90 and 9VAC5-50-90 are duplicative of the regulatory requirements that already exist under the Virginia Coal Surface Mining Reclamation Regulations and the recommendations of DMME Guidance Memorandum No. 29-09. DMME requires each permit applicant to address how it will comply with the Clean Air and Clean Water Acts (4VAC25-130-780.18(b)(9 and 10), and 4VAC25-130-784.13(b)(9 and 10), Reclamation plan; general requirements) in the detailed permit application. DMME may require additional corrective measures if a site situation requires such to protect the environment and the health and safety of the public. The proposed amendments would impose, contrary to the petitioners' claim, a substantial and significant financial burden upon the Commonwealth to conduct duplicative enforcement activities.

While the proposed amendments were crafted to specifically address fugitive dust concerns attributed to coal mining activities, they will in fact be applicable to any activity that may result in fugitive dust concerns across the Commonwealth – logging, gas/oil well/pipeline operations, quarry operations, other mining activities, road construction, development projects, farming operations, etc. DMME also requires mineral mining and gas and oil permittees to meet statutory and regulatory requirements for environmental protection, including fugitive dust. The proposed requirements would duplicate these similar to duplicating requirements on coal mines.

RESPONSE: We agree that existing regulations and guidance already address the petitioners' concerns. DMME's fugitive dust regulations and guidance are specific to the mining industry. They are designed to afford affected sources the flexibility needed to address the needs of a particular mining operation at an individual site. In contrast, the air quality regulations are more general. They are designed to address a wide range of potential fugitive dust issues for various industries throughout the Commonwealth. Working cooperatively, both sets of regulations provide adequate controls of fugitive dust. Nothing in either set of regulations prevents a mining source from implementing any of the petitioners' suggestions; indeed, there may be numerous other potential controls not considered in the petition that might better address a particular fugitive dust situation. Revising the air quality regulations to adopt the petitioners' recommendations would, therefore, be unnecessary and inappropriate for the regulations' purpose.

Note that the suggested revisions could potentially engender unintended problems. For example, the installation of washing and watering systems may require permits under National Pollutant Discharge Elimination System (NPDES) authority. In other words, the solution to an air quality problem should not lead to potential water and waste management problems.

In addition to the financial burden associated with duplicative enforcement activities, there would also be significant costs associated with developing an unnecessary regulation. Full-process regulatory development is expensive and time-consuming, involving hundreds of hours of staff time, and thousands of dollars of services and supplies. It would also divert staff from complex major programs mandated by federal and state law.

As discussed in the response to comment 1, we are pleased to be able to continue our cooperative relationship with DMME as well as other affected parties in protecting public health and welfare.

3. **SUBJECT:** Permits.

COMMENTER: DMME/DMLR

TEXT: The standards that may be applied should reflect the actual site conditions and proximity of the public who may be affected. This is effectively achieved through establishment of site-specific conditions under DMME permits.

RESPONSE: We agree that the establishment of site-specific conditions in a legally enforceable permit is the best means of achieving and maintaining compliance with fugitive dust control requirements.

4. **SUBJECT:** Statewide regulations for local issues.

COMMENTER: Roger Jones, Big Stone Gap, Virginia; Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: Statewide rulemaking is not appropriate for any alleged local residential community dust problems. Construction, timbering, and other industries including coal hauling in local residential areas change periodically and at times are intrusive or a significant change to ordinary traffic patterns and significantly different to what the local community is used to; therefore complaints can occur whether warranted or not and state regulations are currently in place to sufficiently handle those situations when warranted. Many times the only access roads available for hauling coal or other commodities is via public roads; truck routes are not always feasible. The term "reasonable precautions" and list are best left open as can include but not all inclusive. The existing dust regulations are sufficient for allowing local solutions to specific problems, if and as problems occur.

To specifically list in a statewide regulation examples of reasonable precautions that are "reasonable" and applicable in every case ignores the simple reality that there will always be differences in each situation which may make such precautions unreasonable at a particular time or location.

RESPONSE: As discussed in the response to comment 2, fugitive dust is a source-specific and locality-specific issue that needs to be addressed in a general manner that will function statewide. The commenter correctly asserts that the list of "reasonable precautions" is a general list of options, to be considered on a case-by-case basis, for those seeking approaches for controlling fugitive dust. Specific approaches that may be best utilized for a specific industry under specific operating conditions in a particular area of the state may not be appropriate for all industries in different areas of the state. Sources should have as much flexibility as possible in developing fugitive dust controls, and not be limited--or perceived to be limited--to a very particular menu of options, whether appropriate or not.

5. **SUBJECT:** Use of regulations.

COMMENTER: Roger Jones, Big Stone Gap, Virginia

TEXT: When and where do more and more regulations that some entity wants along with even more strict enforcement and normally punitive fines stop? Do the lawyers then sue DEQ to make more money for themselves? It often seems so. More regulations and mandates will never exceed cooperation with the local community.

RESPONSE: We agree that community involvement is an essential element in addressing local fugitive dust problems.

6. **SUBJECT:** Resolution of complaints.

COMMENTER: Roger Jones, Big Stone Gap, Virginia

TEXT: Data from DEQ's own tests do not warrant additional regulations. If the dust complaints have subsided from actions taken, then why implement mandatory additional regulations. More regulations could prove unworkable and costly to entities that do not seem to have the same dust problems in their respective work areas as those alleged complaints in the petition. But petitions also allow entities to garner additional members and dues no doubt.

RESPONSE: As evinced by the experience in Roda, the current air regulation operated properly in that it allowed the source to work closely with DEQ and other parties to resolve the fugitive dust situation. The current DMME and DEQ regulations and guidance are demonstrated to address such situations effectively.

7. **SUBJECT:** DMLR regulatory process.

COMMENTER: Roger Jones, Big Stone Gap, Virginia

TEXT: If any additional requirements are still to be imposed, then it should be through the Division of Mined Land Reclamation (DMLR) regulatory process.

RESPONSE: As discussed in the response to comment 2, DMME's fugitive dust regulations and guidance are specific to the mining industry. Mining-specific fugitive dust situations are best addressed in the DMME permit through the establishment of site-specific conditions. In accordance with § 45.1-161.6 of the Virginia Code, DMME is the lead agency with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation.

8. **SUBJECT:** Necessity of proposed regulations in view of DMME regulations.

COMMENTER: Cumberland Resources Corporation

TEXT: Because DMME has agreed to regulate fugitive dust at mine sites, the proposed regulations are unnecessary. As a result of discussions with DEQ staff, DMME has announced that it will regulate its permittees in regard to fugitive dust both on and off permit sites. A memorandum to this effect was recently released to operators and presented to the board at its November 2009 meeting. The petitioners argue that DMME can only regulate fugitive dust "resulting from erosion." For this reason, the petitioners contend that DMME cannot regulate fugitive dust at mine sites. This contention is erroneous. All materials present at a mine site, including the extracted minerals temporarily stockpiled for subsequent transport, soils and sediments from disturbed areas and surfacing materials (such as crushed stone), are exposed to the atmosphere and thus acted upon by the forces of wind and water erosion. Erosional forces work to break down larger particles into increasingly smaller particles. Once the particles are small and dry enough to become airborne, they are characterized as "dust." Therefore, the resulting "dust," which may ultimately become "fugitive dust," has in fact "resulted from erosion" and can be regulated by DMME.

Additionally, both the Surface Mining Control and Reclamation Act (SMCRA) and its Virginia counterpart specifically require the mining agencies to "insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property. . . ." (See § 515(b)(17) of SMCRA (30 V.S.C. § 1265(b)(17)) and Va. Code § 45.1-212A). In its Guidance Memorandum of November 1, 2009, DMME cites 4 VAC §§ 25-130-816.150(c) and 25-130-817.150(c) in support of its authority to regulate fugitive dust. These regulations specifically authorize DMME to establish "any necessary design criteria" for haulroads. In *Natural Resources Defense Council, Inc. v. EPA*, 937 F.2d 641, 649 (D.C. Cir. 1991), the Court of Appeals found that SMCRA provides ample authority for regulation of fugitive dust associated with haulroads. In their filing, petitioners do not discuss this case or the haulroad regulations under SMCRA and the Virginia Surface Mining Act.

Finally, DEQ is not currently staffed to enforce fugitive dust regulations at mine sites. DMME is already staffed, equipped, and familiar with the facilities and areas of interest. It makes no sense to spend additional taxpayer money to enable DEQ to do a job that DMME is already capable of doing.

RESPONSE: As discussed in the response to comment 2, DMME's fugitive dust regulations and guidance are specific to the mining industry. Mining-specific fugitive dust situations are best addressed in the DMME permit through the establishment of site-specific conditions. As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation.

9. **SUBJECT:** Stringency of proposed provisions.

COMMENTER: Cumberland Resources Corporation; Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: Under Va. Code § 13.1-1308 A, any proposed regulations that are more restrictive than the corresponding federal regulations must be referred to the General Assembly. The petitioners argue that this provision is not applicable "because the Clean Air Act already places restrictions on the release of particulate matter." While EPA regulates some releases of particulate matter, it does not regulate all releases. In fact, EPA recently declined to regulate the release of fugitive dust from roads at coal preparation plants. (See *Standards of Performance for Coal Preparation and Processing Plants; Final Rule*, 74 FR 51950-51985, October 8, 2009.) In declining to issue these regulations, EPA noted that SMCRA already regulates emissions associated with roads from mines and plants at mines.

In response to EPA's decision, the Sierra Club has initiated proceedings to compel EPA to regulate fugitive dust from roads at coal preparation plants. Specifically, the Sierra Club has filed a petition for reconsideration with EPA and a petition for review with the

Court of Appeals for the District of Columbia Circuit. The Sierra Club contends that EPA acted arbitrarily and capriciously in not requiring control measures such as "paving, sweeping excess coal dust, wetting of the road surface, or tire washes." (See Standards of Performance for Coal Preparation and Processing Plants; Proposed Rule, 74 FR 25304, 25313, 25323, May 27, 2009, which lists possible control measures that were not adopted in the final rule.)

So, the Sierra Club is telling EPA and the Court of Appeals that EPA must adopt regulations like the ones proposed to the board, and, at the same time, it is telling the board that equally restrictive federal regulations are already in place. The truth is, the regulations being proposed to the board are more restrictive than any existing EPA regulations, and, therefore, the proposed regulations must go to the General Assembly.

RESPONSE: At this point in the process, there is no proposed regulation in any form that could potentially meet the criteria in § 13.1-1308 A. That issue would have to be addressed should a formal proposal be developed.

10. **SUBJECT:** Statewide rulemaking to address local issues.

COMMENTER: Cumberland Resources Corporation

TEXT: A proposal for statewide rulemaking is not the proper forum to address alleged problems at a specific location. The petition states, "the fugitive dust standard should provide additional examples of reasonable precautions specific to the type of activities that contributed to the documented dust problem in Roda." The proposed rulemaking, if adopted, would apply to all industries statewide. It would be shortsighted to write new regulations with such sweeping implications based on one set of local conditions. If additional regulations are warranted, then research needs to be performed to better define what "reasonable precautions" would mean under a wide range of geographic and topographic settings.

RESPONSE: As discussed in the response to 2, regulatory provisions relevant to a specific industry type in a particular locality are not appropriate in a regulation intended to control a wide range of industries located throughout the entire state. Note that no proposed rulemaking yet exists; the purpose of the petition process is to determine whether the rulemaking process should be undertaken at all.

11. **SUBJECT:** Violation of applicable air quality standards.

COMMENTER: Cumberland Resources Corporation, Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: The proposal is based on a faulty presumption that the existing conditions rise to the level of a violation of applicable air quality standards. The petition refers to a "documented dust problem" in Roda. Our analysis, based on months of scientific data collection, as well as that of DEQ staff, has shown that applicable fugitive dust standards are not being violated at Roda. In this connection, we adopt and incorporate by reference the reports submitted by Cumberland and DEQ staff at the meetings last year. There is no "documented dust problem" at Roda that necessitates additional regulation by the board.

Even if there had been a documented dust problem in Roda, it would be unwise to impose costly regulations of statewide applicability based on an isolated situation that arose during the driest part of the year on an unusual road.

RESPONSE: Air quality monitoring by DEQ in the Roda community indicated one potential exceedance of the national ambient air quality standard (NAAQS) for particulate matter less than 10 microns (PM₁₀). This occurred at a location that did not meet EPA siting criteria for a PM₁₀ monitor, and the monitor was not installed in a manner that would prevent potential operational problems such as particulate re-entrainment. In addition, several activities were occurring during the study in the area of the monitor that could bias the results; a home was burnt down as a means of land clearing and a trash burn barrel was used in close proximity to the monitor. No other potential violations of the PM₁₀ NAAQS were noted by monitoring conducted by DEQ or Cumberland Resources Corporation. The proper approach for addressing fugitive dust issues is to work closely with the source and the community to look for solutions to solve immediate problems with the understanding that as conditions change, solutions may differ. This was the case with the specific situation in Roda, in which the fugitive dust issue was addressed without the creation of new regulations.

12. **SUBJECT:** Reasonable precautions.

COMMENTER: Cumberland Resources Corporation

TEXT: The proposed additional "reasonable precautions" are not universally applicable and present numerous technical problems. Flexibility is a key component of a successful fugitive dust management program because conditions change from site to site and from day to day. The proposed regulations do not provide for flexibility. For example, proposed item #6 requires "the use *of water* to wash the wheels, undercarriage and *other parts* of every vehicle that hauls coal or other materials before or *immediately after* the vehicle leaves a dusty, dirty or muddy surface." (Emphasis added.) What "other parts" should be washed? The proposed regulation provides no answer. Also, the use of truck washes and other water-based dust abatement measures are necessarily limited to periods when the temperature is above freezing. There is no allowance for this in the proposed regulations. It is especially noteworthy that while the petitioners propose to modify what is "reasonable" by including consideration of proximity to homes and atmospheric conditions that might affect movement of particulate matter, there is no provision in their proposal for consideration of conditions that affect the "reasonableness" of their proposed measures as applied to specific conditions. The proposed regulations illustrate a basic lack of understanding of the issues.

Another example of this lack of understanding is the proposal to require trucks to be washed "immediately after" leaving a dusty, dirty or muddy surface. This requirement presents serious operational problems. For example, this company washes trucks hauling from several different mine sites at two central washing stations. While located between the mine sites and the public roads, these wash stations are not washing the trucks "immediately after" leaving a dusty, dirty or muddy surface. Our current

arrangement is working well, as attested to by the petitioners themselves, so why propose this wording? We can only conclude that this is either (a) another example of petitioners lack of understanding in regard to these issues or (b) an attempt to force installation of expensive truck washing facilities at every individual mine site, even if such sites are served by common roads, which favor the concept of a centralized washing facility.

Another example is proposed requirement for rumble strips or speed bumps "before vehicles enter the public road." While these measures may help remove material from the trucks, the resulting impacts produce a lot of noise. If occupied dwellings are nearby, this noise may be a source of irritation for residents, as we often haul at night.

RESPONSE: As discussed elsewhere, potential measures designed to control fugitive dust for air quality purposes need to be broad. Sources must work closely with DEQ and DMME in order to evaluate the best controls needed for their individual situation; sources also need to be flexible in adjusting their plans should a particular measure not be effective or create a different problem. Therefore, a broadly worded regulation that allows operational flexibility for both the department and the regulated community is essential.

13. **SUBJECT:** Flexibility and economic issues.

COMMENTER: Cumberland Resources Corporation

TEXT: The examples provided in these comments illustrate how a "one size fits all" approach as proposed by the petitioners is not practical for fugitive dust. The existing regulatory requirements provide a strong foundation for protection of the public while maintaining the needed flexibility to address complex and variable conditions in the field.

There are numerous other arguments which could be made against this proposal, including the negative economic impacts on all industries capable of producing fugitive dust (not just the coal industry). Ironically, the proposed regulations would punish the very operators, such as this company, who have initiated sweeping voluntary initiatives to control fugitive dust in and around the communities where they work. In this regard, not only are the proposed regulations impractical and unnecessary, they are patently unfair as well.

RESPONSE: As discussed elsewhere, the regulations need to be flexible enough to enable sources to deal with fugitive dust issues as expeditiously and appropriately as possible.

14. **SUBJECT:** General coal industry position.

COMMENTER: Alpha Natural Resources

TEXT: The petitioners have proposed the amendments to address an issue that is specific to coal mining operations in Roda, Virginia. Alpha does not presently conduct coal mining operations in or near Roda. But, if approved, the proposed amendments would apply to Alpha's business, as well as other innumerable and unknown businesses throughout the Commonwealth. Our hope is that the coal industry can continue to achieve a solution to the fugitive dust issue by working with the appropriate state agency and residents in the affected communities. That approach will generate better and more specifically-tailored solutions for the issue at hand than the drastic approach of rulemaking. Alpha has voluntarily initiated fugitive dust controls at its Moss 3 preparation Plant which include additional paving of entrances, a vacuum street sweeper, a truck tire wash, a dust suppression system at the truck scales, and many other similar controls.

RESPONSE: As discussed elsewhere, sources must work closely with the appropriate state agencies and other parties to resolve fugitive dust issues in a manner appropriate to the source and the locality.

15. **SUBJECT:** Success of voluntary measures.

COMMENTER: Alpha Natural Resources; Virginia Independent Power Producers

TEXT: As stated in the petition, voluntary actions by coal mine operators to reduce fugitive dust have been highly successful. The petition outlines the fugitive dust issues in Roda, citing a study by Dr. Viney P. Aneja ("Characterization of Particulate Matter (PM₁₀) in Roda, Virginia," Department of Marine, Earth, and Atmospheric Sciences, North Carolina State University, Raleigh, North Carolina), which claims that levels of particulate matter in Roda were "up to three times the national standard for [PM₁₀]." Roda Road is traveled by coal haul trucks that service coal mines (none of which are Alpha's). According to the petitioners, elevated levels of PM₁₀ are caused by these haul trucks. The petition also states that, following Dr. Aneja's presentation to the board, coal mine operators in Roda "took significant additional steps to reduce the release of fugitive dust from coal trucks in Roda and nearby communities." These steps, which DEQ recognized were reasonable in a January 4, 2010 letter to DMME, included operating water trucks, and sweepers, paving internal road surfaces, and installing truck washing systems.

If the results of the Aneja study were accurate, the steps taken by Roda's coal mine operators resolved the issue. According to the petition, the results of air monitoring studies conducted by DEQ showed dramatic improvement. This improvement was verified in DEQ's January 4 letter, which stated, "We believe the controls put in place in the Roda community have shown positive results and we are pleased that the community has confirmed improvements in situations related to fugitive dust."

The result of the DEQ monitoring study demonstrate that those involved in the day-to-day operations at coal mines best understand the fugitive dust issue and are best positioned to take remedial action. The results also show that the most effective response to the issue must be determined on a case-by-case, mine-by-mine basis. The proposed amendments create a strong presumption in favor of the reasonableness of the enumerated precautions. In turn, they may have the unintended effect of reducing the use of more effective fugitive dust controls in favor of the specifically enumerated precautions. Indeed, in the January 4 letter, DEQ acknowledged that a flexible approach is necessary to control fugitive dust:

DEQ understands that what might constitute reasonable measures to control fugitive dust at a certain facility at one point in time might not be considered to be reasonable at a different facility or at the same facility at a different time under a different set of circumstances.

The prudent course of action is to continue to allow the specific coal mine operators in Roda to tackle the fugitive dust issue. Their response following Dr. Aneja's presentation indicates the industry's willingness to cooperate. The solutions initiated by the coal mine operators are more effective than the proposed amendments could be.

RESPONSE: As discussed elsewhere, the regulations need to be flexible enough to enable sources to deal with fugitive dust issues as expeditiously and appropriately as possible.

16. **SUBJECT:** DMME authority.

COMMENTER: Alpha Natural Resources

TEXT: Although the petitioners acknowledge the effectiveness of the actions taken by mine operators, they remain concerned about the fact that these actions were voluntary. If promulgated, the proposed amendments would be enforced by DEQ. The petitioners are incorrect in stating that DMME has only limited authority to tackle the issue of fugitive dust caused by coal haul trucks. They complain that DMME can only regulate fugitive dust that is "attendant to erosion." However, the conditions that petitioners seek to address through the proposed amendments are already within the scope of DMME enforcement. Dust from erosion as well as dust generated from stockpiled coal and soil, internal roads, crushing and processing operations, or other related activities is currently regulated by DMME.

DMME is the agency vested with the authority to regulate fugitive dust from coal trucks and is in the best position to do so. Indeed, DMME recognizes this authority and has elected to regulate coal haul truck fugitive dust as set forth in the DEQ/DMME MOA. DMME's authority to regulate fugitive dust attendant to erosion and other mining activities cannot now be further delegated to DEQ because the petitioners would prefer DEQ rather than DMME as the enforcement agency.

RESPONSE: As discussed elsewhere, the air quality regulations, which are general in nature, need to be flexible enough to enable a variety of sources to deal with fugitive dust issues as expeditiously and appropriately as possible throughout the state. As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation. Note that adding certain measures to the list of reasonable measures does not automatically make those specific measures legally enforceable, nor does it make implementation of voluntary measures permanent. As discussed elsewhere, the list is a general list of options to be considered on a case-by-case basis and is not intended to limit approaches to fugitive dust control.

17. **SUBJECT:** Statewide rulemaking to address a local issue.

COMMENTER: Alpha Natural Resources

TEXT: The proposed amendments are a drastic step to correct this isolated issue. When presented with the results of the Aneja study, coal mine operators near Roda acted quickly and efficiently to remediate the elevated levels of PM₁₀. Their response was effective. The flexibility and efficiency with which the coal mine operators were able to respond was an integral part of the solution. The proposed amendments would undermine this flexibility and efficiency, and would create presumptions of reasonableness for certain actions that, although reasonable, may not be the best course of action for every situation.

Coal mine operators and DMME should be given the opportunity to continue to address the issue. Amending statewide stationary source regulations should be a last step rather than a first step. The proposed amendments would have a far-reaching effect, well beyond the coal industry and Roda. Such action should be taken deliberately, and only when necessary. If promulgated, the amendments would apply statewide to all trucking and haul operations on public roads attendant to each and every stationary source in the Commonwealth. The magnitude of the economic impact on Virginia industries due to the inflexibility of the proposed amendments cannot be ascertained. But in the light of the success of the voluntary initiatives already taken by coal mine operators and DMME's documented willingness to regulate fugitive dust from coal haul trucks, the proposals are wholly unnecessary.

Furthermore, between DMME and DEQ, DMME is in the best position and is the best-equipped to tackle this issue. DMME is already staffed and already has the requisite expertise to effectively require and enforce permit conditions for controlling fugitive dust. Delegating DMME's authority to DEQ would require significant time and resources, and would be a waste of the state's precious fiscal resources.

RESPONSE: As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation.

18. **SUBJECT:** Stationary source regulations.

COMMENTER: Alpha Natural Resources

TEXT: If rulemaking is to take place, the proposed amendments to the stationary source regulations are not appropriate. The provisions that petitioners propose to amend, 9VAC5-40-90 and 9VAC5-50-90, were promulgated by the board to regulate fugitive dust at new and modified stationary sources and existing stationary sources. A "stationary source" is any building, structure, facility or installation which emits or may emit any air pollutant. As described in 9VAC5-10-20, a "stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same 'major group' (i.e., which have the same 2-digit code) as described in the

Standard Industrial Classification Manual (see 9VAC5-20-21)." Haul trucks traveling on public roads are not within the scope of this definition. Obviously, a coal truck is not a building, structure, facility or installation. Also, coal haul trucking operations do not fall within the second part of the definition. First and most importantly, the major group for coal mine operations is 12. The activities listed for establishments under major group 12 are coal mining activities; trucking and hauling operations on public roads are not included. Rather, the trucking operations fall under major group 42, motor freight transportation and warehousing. Second, the trucking operations may or may not be "under the control of the same person" that operates the coal mine. The determination of whether the hauling activities are a stationary source should not turn on whether the same owner directs both activities. It would be illogical to regulate trucks leaving coal mines that belong to the mine operator and not regulate all other trucks leaving the site or any other site.

RESPONSE: 9VAC5-40-90 and 9VAC5-50-90 apply, as appropriate, to each source of fugitive dust emissions at a stationary source. In accordance with the general definition of "source" found at 9VAC5-10-20 of 9VAC5-10 (General Definitions), a source is "any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals."

"Fugitive dust" is defined in 9VAC5-40-70 and 9VAC5-50-70 as "particulate matter composed of soil or other materials of natural origin, or both. Fugitive dust may include emissions from haul roads, wind erosion of exposed surfaces and storage piles and other activities in which the material is either removed, transported or redistributed."

While every effort is made to organize the regulations in a logical manner, control of fugitive dust, by its very nature, does not fall neatly into a single category. It is most expedient and convenient to regulate fugitive dust generated by mobile sources in the current stationary source category. The commenter does not suggest an alternative way of regulating fugitive dust from trucks; however, locating such requirements in a new, separate regulation or chapter would be unnecessarily complex, and more difficult for regulated entities to comply with.

19. **SUBJECT:** Statewide regulations for local issues; emissions from electric generating plants.

COMMENTER: Birchwood Power Partners

TEXT: It would be more effective to revise the rules that apply to specific sources of concern rather than those that apply to general source categories such as the rules proposed for revision. The concern the amendment is designed to address is a small subset of all the stationary sources in Virginia. However, the proposed amendments would apply to all existing and new stationary sources of air pollution in the state. DEQ has already imposed terms and conditions addressing fugitive dust emissions from electric generating plants in the state. For example, under the terms of Birchwood's Title V and PSD permits, the facility implements a number of fugitive dust measures that are either specifically required by the permit or have been adopted as best management practices (i.e., "reasonable precautions"). Such measures include the following:

- The facility only purchases coal that has been washed to remove coal fines.
- The coal unloading system is equipped with wet suppression that engages each time coal is unloaded from a railcar.
- The coal pile is monitored for fugitive dust with wet suppression applied if blowing dust is observed.
- The ash and lime silos, coal crushers, coal reclaim bunkers and tripper deck are equipped with fabric filter dust cabinets to prevent fugitive dust.
- All coal conveyors and transfer points are covered to reduce wind blow dust.
- The facility monitors for the presence of coal ash on all roadways, and uses a water truck to apply water to the roadway at least once per weekday except when the roads are adequately wet from rainwater or during freezing conditions.
- On a daily basis, plant personnel inspect the baghouse slab and scrubber hopper areas for ash. If ash is discovered, plant personnel vacuum or wash down the areas.
- Prior to loading ash into disposal trucks, water is mixed with the ash in a pug mill to reduce windblown ash.
- To reduce blowing dust from disposal trucks while traveling down roads, the truck beds are equipped with a fabric cover, which is placed over the ash prior to travel.

RESPONSE: As discussed in the response to comment 2, existing regulations and guidance already address the petitioners' concerns. DMME's fugitive dust regulations and guidance are specific to the mining industry. In contrast, the air quality regulations are designed to address a wide range of potential fugitive dust issues for various industries throughout the Commonwealth. Working cooperatively, both sets of regulations provide adequate controls of fugitive dust. As discussed elsewhere, the general nature of the air quality rule allows sources of various types, including electric generating facilities, the flexibility needed to address their source type as well as site-specific conditions. It is important that sources work closely with the appropriate state agencies as well as the affected community in order to successfully control fugitive dust.

20. **SUBJECT:** Relationship of DMME and DEQ regulations.

COMMENTER: Birchwood Power Partners

TEXT: It is our understanding that DEQ is working cooperatively with DMME to put measures into place to address fugitive dust concerns in communities where coal handling and loading facilities are located. DMME has the responsibility and authority to implement the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (Chapter 19, Title 45.1 of the Code of Virginia). The regulations

promulgated by DMME to fulfill this responsibility require mine owners and operators to obtain a permit (4VAC25-130-773) and meet the standards set forth in the rules for various structures, including roads (4VAC25-130-816).

The application to obtain a permit from DMME must be submitted prior to initiation of any mining activity, and must include, as described in 4VAC25-130-780 18(b)(10):

A description of steps to be taken to comply with the requirements of the **Clean Air Act** (42 USC § 7401 et seq.), the Clean Water Act (33 USC § 1251 et seq.), and other applicable **air** and water quality laws and regulations and health and safety standards. [Emphasis added.]

Any new road must meet the general performance requirements for roads, including the following requirements of 4VAC25-130-816.150:

(b) Performance standards. Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to: (1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust as well as dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices . . . (e) Maintenance (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the division.

In addition to meeting the general requirements for roads, primary roads must also meet the surfacing and maintenance requirements set forth in 4VAC25-130-816.151:

(e) Primary roads shall be surfaced with rock, crushed stone, gravel, asphalt, or other material approved by the division as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. (f) Maintenance. Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. Sediment control structures shall be cleaned regularly and when sediment accumulation may impair their functioning. Maintenance shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

To obtain a permit, the applicant must also demonstrate that all existing roads that may be used in the proposed mining activity also, as stated in 4VAC25-130-773.16(c)(12)(i), "control or minimize erosion and siltation, **air** and water **pollution**, and damage to public or private property. [Emphasis added.]

The regulations provide for public participation during review of the permit application (4VAC25-130-733.13). Once a permit has been issued, DMME is required to conduct at least one partial inspection a month and at least one full inspection a year of each active surface coal mining and reclamation operation under its jurisdiction, as required by 4VAC25-130-840.11(a). If the owner or operator is found to be in violation of any part of the permit, DMME has the authority to require cessation of all or part of the operation, as stated in 4VAC25-130-843.11(a)(1):

An authorized representative of the director shall immediately order a cessation of a coal exploration or a surface mining and reclamation operation or the relevant portion thereof, if the representative finds, on the basis of any inspection, any condition or practice, or any violation of the Act, this chapter, or any condition of a permit or an exploration approval imposed under the Act, or this chapter which: (i) Creates an imminent danger to the health or safety of the public; or (ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, **air**, or water resources. [Emphasis added.]

Since coal mining and processing facilities are not usually large enough to be required to obtain an air permit, the potential for fugitive dust cannot be assessed by DEQ prior to the initiation of the mining activities. In contrast, the DMME rules apply to any coal mining activities that extract more than 250 tons of coal for other than personal use. As noted above, consideration of the minimization of air pollution (including fugitive dust) associated with the proposed mining activities is part of DMME's permitting process. As required by 4VAC25-130-773.13(c), citizens that are concerned about the potential impact of fugitive emissions may submit comments to DMME during the public comment period, and request an informal conference.

Similarly, DMME already makes routine inspections of mining facilities, whereas DEQ would have to initiate an inspection in response to a complaint. For these reasons, the regulations and permitting program being implemented by DMME are a more effective way of addressing the petitioners' concerns than modifying the DEQ rule that applies to fugitive dust in general.

DEQ and DMME should continue to work cooperatively to address fugitive dust emissions from coal mining and processing facilities.

RESPONSE: As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation. DEQ and DMME are, as addressed in the response to comment 1, committed to working cooperatively to protect public health and welfare.

21. **SUBJECT:** DMME/DEQ authorities.

COMMENTER: Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: DMME has announced that it will regulate its permit holders in regard to fugitive dust both on and off permit sites. A memorandum to this effect was recently released to coal operators and presented to the board at its November 2009 meeting. DEQ is not currently staffed to enforce fugitive dust regulations at mine sites. DMME is already staffed, equipped, and familiar with the facilities and areas of interest. There is no need, especially during this difficult period of state agency belt-tightening, for DEQ to duplicate DMME's regulatory efforts.

RESPONSE: As discussed in the response to comment 7, DMME is the lead agency, in accordance with § 45.1-161.6, with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45. Thus, DMME may require additional corrective measures if necessitated by a particular site situation. As discussed in the response to comment 2, adoption of unnecessary regulatory provisions would not be an appropriate use of scarce state resources.

22. **SUBJECT:** Existing regulatory requirements.

COMMENTER: Virginia Coal Association on behalf of Virginia Transportation Construction Alliance, Virginia Ready-Mixed Concrete Association, Virginia Trucking Association, Homebuilders Association of Virginia, Virginia Chamber of Commerce, and Virginia Manufacturers Association

TEXT: Virginia's existing regulatory requirements already provide a strong foundation for protection of the public while maintaining the necessary flexibility to address complex and variable conditions in the field. The petitioners' proposal, if adopted, would unnecessarily and negatively affect all industries capable of producing fugitive dust.

RESPONSE: As discussed in the response to comment 2, the existing regulations and guidance already address the petitioners' concerns. Working cooperatively, both DMME and DEQ's regulations provide adequate controls of fugitive dust.

23. **SUBJECT:** Actions taken to address fugitive dust concerns/DEQ/DMME cooperation.

COMMENTER: Virginia Independent Power Producers

TEXT: Information presented at the November 2009 board meeting indicated that DEQ and DMME have been working cooperatively to address dust concerns in and near the town of Roda. Such information indicated that substantial progress had been made in addressing dust problems and that regulatory enforcement of the two state agencies, working cooperatively, would continue.

DEQ and DMME have entered into an MOA to work cooperatively to "facilitate efficient and effective administration of applicable state and federal environmental laws, regulations, and policies for the control of fugitive dust on an immediately adjacent to active coal mining sites." The MOA rightly names DMME as the lead agency for issuing and enforcing permits for mining activities. Under the MOA, DMME will notify DEQ of off-site fugitive dust complaints and the two agencies will coordinate their investigations of the alleged violation. Because DMME already has the authority to regulate the sources identified in the petition, has implemented a permitting program for those sources and has issued recent guidance that incorporates all of the control techniques listed in the petition, the regulations and permitting program being implemented by DMME are a more effective way of addressing the concerns of the petitioners than modifying the DEQ rule that applies to fugitive emissions in general. While DEQ and DMME should continue to work together cooperatively to address fugitive dust emissions from coal mining and processing facilities, the regulatory amendments to the current DEQ fugitive dust rules are not necessary.

RESPONSE: As discussed in the response to comments 1 and 2, DEQ and DMME will continue their successful collaboration in addressing fugitive dust situations. DMME, as discussed elsewhere, is the agency with the primary authority and the capability of addressing emissions specific to the mining industry.

24. **SUBJECT:** Scope and effect of proposed amendments.

COMMENTER: Virginia Independent Power Producers

TEXT: The regulatory amendments proposed by the petitioners are too broad; if adopted, they would apply to all existing and new stationary sources of air pollution, while the complaints that stimulated the petition pertain only to coal handling and loading facilities.

The proposed regulatory amendments are also extremely vague and, if adopted, would be subject to misunderstanding and to numerous disputes.

RESPONSE: As discussed in the response to comment 2 and elsewhere, the proposed amendments are too broad in the sense that they would apply statewide to a wide variety of sources. As discussed in the response to 4 and elsewhere, the proposed amendments are, rather than too vague, too specific in prescribing controls suitable to the mining industry to the numerous sources of fugitive dust. Because of this, we agree that the inclusion of mining-specific provisions in general fugitive dust provisions would indeed create the potential for misunderstanding.

25. **SUBJECT:** Support for the petition.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: The petition asks that the measures that are to be considered reasonable related to dust problems in southwest Virginia be strengthened and clarified. Endorsing that path will assure the citizens of coal communities that measures that have previously been implemented voluntarily will remain in place and that other communities of southwest Virginia will benefit from these same measures as well.

RESPONSE: As discussed in the response to comment 2, use of a regulation intended to address fugitive dust issues from a wide range of sources throughout the state is not appropriate for addressing issues relative to a particular industry in a particular portion of the state. Expansion of the regulation's list of reasonable precautions, as discussed elsewhere, does not guarantee that voluntary measures will become permanent. The regulations specify that reasonable precautions may include, but are not limited to, a brief list of potential controls which are essentially examples. Sources are not limited to implementing these controls and no others, nor are sources required to implement each and every one of these controls. Rather, the regulation imparts a source the flexibility to handle fugitive dust issues specific to their situation, including local conditions and the nature of the industry.

26. **SUBJECT:** DMME guidance.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: Presently, DMME has new guidance for road dust compliance and should it be determined that dust control plans aren't adequate, DMME would require plans with permit applications or when an application comes up for renewal. The largest single drawback to this plan of action is found in the numerous complaints that have been registered with DMME in the last few years with almost no violations written and no immediate relief endorsed or enforced by DMME. The DMME guidance states that "since January 2005, the Division has investigated approximately 250 complaints from citizens concerning tracking of material or fugitive dust from permitted haul roads and coal surface mining operations" and that for "the majority" the DMME took no enforcement action. In other words, their reputation precedes them and it is not acceptable.

No one in these communities wishes to wait for permit renewal before dust problems are addressed. I encourage consideration of whether DMME has the authority to solve these problems and whether they have the will to do so. Consider carefully whether the climate at DMME and DEQ has really been transformed and if so, how and why and whether the current reasoning is likely to change the climate permanently or whether as Dr. Aneja's study becomes history, so will all the measures taken so expediently in response to that study.

RESPONSE: As discussed in the response to comment 1, DMME has worked closely with DEQ, as well as other government agencies, the general public, and the regulated community, to resolve a specific issue within a specific area. DMME and DEQ have entered into an MOA that describes how the agencies will coordinate their responses in the future. We are confident that this coordinated approach enables both agencies to effectively deal with fugitive dust issues relative to the mining industry.

The guidance document (Guidance Memorandum No. 29-09: November 9, 2009) issued by DMME states that in reviewing a revision, new permit, or renewal application, DMME will consider the current or potential situation to determine whether fugitive dust may be a concern. In the event DMME observes a situation where fugitive dust from a permitted operation is an issue, DMME may issue the permittee appropriate enforcement action and possible civil penalties to compel compliance. In addition, if the potential for a continual fugitive dust problem exists, DMME may request by a revision order notice (RON) a more comprehensive road maintenance plan from the permittee to address the potential or actual problem. The RON would compel the permittee to develop and implement a more comprehensive plan that will specify the measures the company will take to better control and minimize tracking of material onto public roads and the generation of fugitive dust that results from its operation's traffic.

As discussed elsewhere, the current DEQ regulation, as well as the recommended changes offered by the petitioners, does not require that those specific measures be formally adopted into a permit. Rather, because it is a statewide regulation designed to deal with a statewide issue in a flexible way, the list of reasonable precautions is merely an initial list of options for consideration for an affected source to use in controlling fugitive dust emissions in a way that works for both the specific industry and the community in which it operates. Adding a series of options that are particular to the mining industry is not appropriate for these regulations, and is best approached through DMME's permitting process.

27. **SUBJECT:** Implementation of reasonable measures in Roda.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: After a presentation to the board, those involved in mining in the area of Roda immediately put in place measures to help alleviate the dust problems, even before DEQ could install air monitors. In a sense, the industry at that point strongly argued our case for us through their actions. They put in place measures that they obviously considered reasonable to help alleviate the problems associated with fugitive and coal dust flowing from and being carried from mining operations into living communities. All these measures, at present, are voluntary and DEQ's commitment to ensure that these become permanent is non-existent. Now, with the evidence that these measures can in fact improve the quality of air in the area, through the test results obtained by DEQ's air monitors, these measures should become permanent and encompass other communities in southwest Virginia so they may also participate in improved air quality.

RESPONSE: As discussed elsewhere, voluntary measures undertaken by the mining companies have been effective in controlling fugitive dust in the Roda area. However, revising the list of what are considered to be reasonable measures does not guarantee the permanent imposition of those specific measures on any particular company or to any regulated entities throughout the state. Even if those provisions were to be made mandatory, they would still not preclude a fugitive dust problem from occurring under different scenarios than those anticipated by the petitioners, nor would they necessarily correct a fugitive dust problem associated with a different type of industry.

The guidance documents issued by DMME are best suited for addressing fugitive dust issues at mining operations. As discussed in the response to comment 26, DMME's guidance states that in reviewing a revision, new permit, or renewal application, DMME will consider the current or potential situation to determine whether fugitive dust may be a concern. In the event DMME observes a situation where fugitive dust from a permitted operation is an issue, DMME may issue the permittee appropriate enforcement action and possible civil penalties to compel compliance. In addition, if the potential for a continual fugitive dust problem exists, DMME may request by a RON a more comprehensive road maintenance plan from the permittee to address the potential or actual problem. The RON would compel the permittee to develop and implement a more comprehensive plan that will specify the measures the company will take to better control and minimize tracking of material onto public roads and the generation of fugitive dust that results from its operation's traffic.

28. **SUBJECT:** Fugitive dust in certain localities.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: Photographs illustrating the fugitive dust issue in the area from the communities of Stephens, Appalachia, and Stonega have been provided. The hugely detrimental-to-human-health dust problems in Roda are not isolated to that lone community but are indicative of what is being endured by many coal mining communities in southwest Virginia.

RESPONSE: The commenter's concerns, and those of the affected communities, are appreciated.

29. **SUBJECT:** Preventive health care.

COMMENTER: Kathy Selvage, Wise, Virginia

TEXT: Revising the fugitive dust regulations would contribute to preventive health care for Wise County and southwest Virginia's citizens by improving the quality of air that southwest Virginians breathe. Every year, thousands from across the area come to the Wise County fairgrounds for their health care and through the generosity of many institutions and personnel along with equipment and materials, they receive their once a year encounter with healthcare providers. Each of these thousands of people who come receive multiples of procedures, making the treatment encounters many thousands more than the head count. It is one of the most important reasons for you as a board to engage in matters to strengthen the regulations that exist to aid in the prevention of medical conditions that come from breathing and living with excessive amounts of dust and the pollutants contained in it.

The medical community knows full well what the repercussions of this are. I point you to "Mortality in Appalachian coal mining regions: The value of statistical life lost" (Michael Hendryx and Melissa M. Ahem, Public Health Reports, July-August 2009: 124, 7) in which it is said: "Previous research that examined specific forms of mortality in coal mining areas found that chronic forms of heart, respiratory, and kidney disease, as well as lung cancer, remained elevated after adjusting for socioeconomic and behavioral factors. Elevated adjusted mortality occurred in both males and females, suggesting that the effects were not due to occupational exposure, as almost all coal miners are men. These illnesses are consistent with a hypothesis of exposure to water and air pollution from mining activities. There is evidence that the coal mining industry is a significant source of both air and water pollution."

RESPONSE: The control of fugitive dust is indeed necessary to protect public health.

30. **SUBJECT:** Support for the petition.

COMMENTER: 71 citizens, collected and submitted by Southern Appalachian Mountain Stewards (SAMS)

TEXT: I am writing today to express my support for the petition to create additional regulations to ensure that coal dust is controlled in our communities. I want to thank the Air Board for being an ally to us in our situation. For years now we have suffered from the terrible health and quality of life impacts that the excessive amounts of coal dust has had on our communities. We need a change and we need this to stop. The petition outlines specific actions that will better control the dust and thus improve the quality of life in these coal-producing communities that we call home. Specific actions such as installing and using truck washers, rumble strips or speed bumps, and street sweepers, will make a positive impact on our communities and we urge you to add them to the current regulations. These measures need to be mandatory; our health relies on this and we deserve it. We don't need our homes and lives destroyed by what's happening in our communities. Please help us by making dust control mandatory for trucks and surface mine operations.

RESPONSE: The commenters' concerns are appreciated. As discussed elsewhere, the current regulations of the board are designed to address fugitive dust problems not only in southwest Virginia, but throughout the Commonwealth as well. These regulations work in conjunction with the regulations of other agencies in order to control dust from trucks and surface mine operations, as well as from a wide range of other source types.

31. **SUBJECT:** Support for the petition.

COMMENTER: 100 citizen emails sponsored by the Sierra Club

TEXT: My friends in southwest Virginia have asked me to write you in support of the petition they submitted to the board to amend dust regulations to require coal operators to take certain reasonable precautions to prevent the release of dust from coal trucks in residential communities. I have learned about the dust situation in communities like Roda, Virginia and I am very concerned about the impacts of this dust on the health and quality of life for people who must endure such conditions. I have also learned that citizens from southwest Virginia have been asking for almost a year for help in alleviating dust problems in the communities they live in. They appreciate the attention the board has already given this matter, but feel they have not seen actions that fully address the seriousness of the problems. All Virginians deserve to breathe clean air; the proposed dust regulations will help achieve that important goal. Please take the opportunity presented to the board to adopt strict, enforceable controls to keep dust from invading the communities, homes, and lungs of the people in southwest Virginia.

RESPONSE: The commenters' concerns are appreciated. As discussed elsewhere, the regulations of the board are designed to address fugitive dust problems not only in southwest Virginia, but throughout the Commonwealth as well. We are confident that DEQ's coordinated efforts with DMME will protect the citizens of southwest Virginia, as well as those in other communities throughout the Commonwealth.

High Priority Violators

**REPORT TO THE STATE AIR POLLUTION CONTROL BOARD
CONCERNING HIGH PRIORITY VIOLATORS (HPV's) FOR THE FIRST QUARTER, 2010**

NOV's Issued from October through December 2009.

DEQ Region	Facility	Brief Description	Status
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TRO	Royal Fumigation Inc. Suffolk City, Virginia Registration No. 61579 SIC 4959 Sanitary Services, NEC NAICS 488119 Transportation and Warehousing	Discovery dates – 11/30/09 Alleged violations: Construction and operation of a fumigation facility without acquiring the appropriate permits.	NOV - Issued 12/21/09 CO - <i>In Development</i> Civil Penalty Additional Information: <i>Conduct a Case-by-case MACT determination” as required by section 112(g) of the 1990 Clean Air Act Amendments.</i> <i>Submit a Form 805 Application (Title V) and a Form 7 which includes all the information required in Chapter 80 Article 7</i>
Updates will be provided by the Air Division Director as discussed in the “Other Business” section of the Agenda.			

CO’s Issued from October through December 2009.

EPA & VRO	O-N Minerals Chemstone Co. – Strasburg Strasburg, Virginia Shenandoah County Registration No. 80252 SIC 3274 Lime NAICS 327410 Nonmetallic Mineral Product Mfg., Lime and Gypsum	Discovery dates – 5/19/08 Alleged violations: 1st NOV - SO2 values from testing the Rotary Kiln (conducted on 10/30/07) were 66.1 lbs/hr. That emissions rate corresponds to a PTE of 289.5 tons/yr and is above PSD significance levels. The facility does not have a PSD permit. EPA NOV - Alleged violations of the Lime Plant NSPS (40 CFR 60 Subpart HH), Prevention of Significant Deterioration (PSD) provisions for physical modifications, and exceeding permitted SO2 limits.	1st NOV - Issued 6/3/08 EPA NOV - Issued 7/29/08 EPA ACO Executed 11/02/09 EPA Penalty \$121,289.00 DEQ CO Executed 10/26/09 Civil Penalty Paid \$158,980.00 Additional Information: 10/31/08 test results were reviewed and the facility demonstrated compliance with permit limits. The company’s plan to EPA's RTP, EPA Region III and VADEQ for the installation and operation of SO2 CEMs has been approved and required to be installed by 3/15/10. The last milestone is to achieve an SO2 emission rate for the Rotary Kiln by 09/10/10.
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CO’s In Development – Previously Reported NOV’s

TRO	Southeastern Public Service Authority (SPSA) – Refuse Derived Fuel Plant Portsmouth, Virginia Portsmouth City Registration No. 61018 SIC 4961 & 4953 Steam & Air Conditioning sup, & Refuse systems NAICS 221330, 562213 & 562219	Discovery date – 4/23/09 Alleged violation: Quarterly Excess Emissions Reports (EERs), document CO limits being exceeded during 6 different quarterly reports since July 2005.	NOV - Issued 4/23/09 CO - <i>In Development</i> Additional Information: Case is in Review On 5/28/09 had an NOV meeting with the facility. The facility is updating the BMP’s to reduce CO emissions and promote complete combustion. The Title V permit was amended on 7/21/09 to incorporate the CO limit from the PSD Permit.
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	Utilities, Solid Waste Combustor, Waste Treatment and Disposal		
BRRO	Internet Radford Foundry Radford, Virginia Radford City Registration No. 21256 SIC 3321 Gray Iron Foundries NAICS 331511 Primary Metal Mfg.– Iron Foundries	Discovery dates – 6/9/09 Alleged violations: Failed to submit CY 2008 Title V Annual Compliance Certification (ACC) and Semi-Annual Monitoring Report (SAMR) in a timely manner, conduct weekly opacity observations, and keep the associated records.	NOV CO - Issued 7/20/09 - <i>In Development</i> Additional Information: Title V ACC and SAMR were both received on 5/13/09. 8/10/09 - NOV Meeting The Facility is no longer operating and is in Bankruptcy proceedings.
PRO	Omega Protein - Reedville Reedville, Virginia Northumberland County Registration No. 40278 SIC 2077 Animal and Marine Fats & Oils NAICS 311613 Food Mfg. – Animal Slaughtering and Processing	Discovery dates – 7/23/09 Alleged violations: Failure to maintain control equipment, report malfunctions, and conduct required stack testing of an emissions unit.	NOV CO - Issued 9/24/09 - <i>In Development</i> Additional Information:

EPA NOV's Issued from October through December 2009

None

EPA CO's Issued from October through December 2009

EPA & VRO	O-N Minerals Chemstone Co. – Strasburg	See section “CO's Issued from October through December 2009”.
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EPA Cases In Development – Previously Reported NOV's

*The inspections at the Hopewell facilities were conducted as part of EPA Region III's Hopewell Geographic Initiative, which is an enforcement strategy created, in part to better understand the transfer of volatile organic compounds and hazardous air pollutants between facilities in the Hopewell geographic air shed.			
*EPA	Ashland Aqualon Functional Ingredients (Hercules) Hopewell, Virginia Hopewell City Registration No. 50363 SIC 2869 Industr. Organic Chemical	Discovery date – 11/8/07 Alleged violations: Alleged violations of the Cellulose MACT (40 CFR 63 Subpart UUUU) and the associated Leak Detection and Repair (LDAR) program.	EPA NOV - Issued 4/2/09 Additional Information: 7/8/09 - NOV Meeting was held with EPA, DEQ, and the Responsible Party

	<p>NEC NAICS 325199 Chemical Mfg.</p>		
*EPA	<p>Hopewell Regional Wastewater Treatment Facility (WWTP)</p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50735</p> <p>SIC 4952 Sewage Systems NAICS 221320 Utilities, Water, Sewage and Other Systems</p>	<p>Discovery dates – 11/7/07</p> <p>Alleged violations:</p> <p>Violations of 40 CFR 63 Subpart VVV (Publically Owned Treatment Works - POTW) and Reasonably Available Control Technology (RACT) that include failure the to provide appropriate notification, meet control requirements, conduct inspections and monitoring, properly calculate emission values.</p>	<p>NOV - Issued 7/6/09</p> <p>Additional Information:</p> <p>9/23/09 - NOV Meeting was held with EPA, DEQ, and the Responsible Party</p>
*EPA	<p>DuPont Teijin Films</p> <p>Hopewell, Virginia Chesterfield County</p> <p>Registration No. 50418</p> <p>SIC 2821 Plastic Material/Synthetic resins NAICS 325211 Chemical - resin, Synthetic rubber, and artificial synthetic fibers.</p>	<p>Discovery dates – 4/18/08</p> <p>Alleged violations:</p> <p>Violations of 40 CFR 63 Subpart JJJ (Polymers and Resins Group IV), Subpart H (Equipment Leaks), and Subpart EEEE (Organic Liquid Distribution (Non-Gasoline) that include improper use of emission debits and credits; failure to provide certifications, reports and plans; improper emission controls; and failure to identify and repair leaking components.</p>	<p>NOV - Issued 7/17/09</p> <p>Additional Information:</p> <p>9/10/09 - NOV Meeting was held with EPA, DEQ, and the Responsible Party</p>
*EPA	<p>Honeywell International Inc.</p> <p>Hopewell, Virginia Hopewell City</p> <p>Registration No. 50232</p> <p>SIC 2869, 2899, 2819 Industr. Organic Chemical NEC, Chemical & Chem. Prep, NEC, Industrial Inorganic Chemicals NAICS 325199 Chemical Mfg.</p>	<p>Discovery date – 11/6/07</p> <p>Alleged violations:</p> <p>1st NOV - Alleged violations of the Benzene Waste NESHAP (40 CFR 61 Subpart FF) and the associated Leak Detection and Repair (LDAR) program for the Organic HAPs from Equipment Leaks MACT (40 CFR 63 Subpart H)</p> <p>2nd NOV - Annual NOx and PM10 emission limit exceedances in 2004, 2005, 2006, and 2007 at the A, C, D, and E trains of the Area 9 hydroxylamine production unit.</p>	<p>EPA 1st NOV - Issued 3/10/09 EPA 2nd NOV - Issued 8/21/09</p> <p>Additional Information:</p> <p>5/27/09 - NOV Meeting was held with EPA, DEQ, and the Responsible Party</p> <p>11/17/09 - NOV Meeting was held with EPA, DEQ, and the Responsible Party</p>