

**TENTATIVE AGENDA AND MINIBOOK
STATE AIR POLLUTION CONTROL BOARD MEETING
THURSDAY, DECEMBER 8, 2005 –
FRIDAY, DECEMBER 9, 2005**

**DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
4949-A COX ROAD
GLEN ALLEN, VA**

Convene – December 8, 2005 - 9:00 A.M.

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Adjourn

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

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

their consideration.

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

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

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

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

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

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

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

For a regulatory action should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, an additional public comment period may be announced by the Department in order for all interested persons to have an opportunity to participate.

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

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

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

MAJOR NEW SOURCE REVIEW REFORM (9 VAC 5 CHAPTERS 50 AND 80, REV. E03) - Public Participation Report and Request for Board Action: On December 31, 2002, EPA promulgated its final rule revising the federal New Source Review (NSR) permitting program for PSD (attainment) and nonattainment areas, by publishing the rule in the Federal Register (67 FR 80185). The new rule, signed by the Administrator on November 22, 2002, affects 40 CFR 51.165 and 40 CFR 51.166, which provides the requirements for the development of the state major NSR programs. In Virginia, the major NSR programs are implemented via Articles 8 and 9 of 9 VAC 5 Chapter 80. The state must adopt and submit revisions to the SIP to reflect the rule revisions no later than January 2, 2006.

Articles 8 and 9 of 9 VAC 5 Chapter 80 apply to the construction of new major stationary sources or major modifications. The owner must obtain a permit prior to the construction or modification of the source. The owner of the proposed new or modified source must provide information as may be needed to enable a preconstruction review in order to determine compliance with applicable control technology and other standards, and to assess the impact of the emissions from the facility on air quality. The regulation also provides the basis for final action (approval or disapproval) on the permit depending on the results of the preconstruction review.

EPA's new major NSR reform rule originally incorporated five main elements: (i) changes to the method for determining baseline actual emissions; (ii) changes to the method for determining emissions increases due to operational change; (iii) provisions for pollution control projects (PCPs); (iv) provisions for Clean Units; and (v) provisions to allow for compliance with plantwide applicability limits (PALs). (Since EPA issued its final regulations, a court decision remanded the Clean Unit and PCP provisions.) The current NSR regulations need to be amended in order to meet the new requirements.

The department is requesting approval of draft final regulation amendments that meet federal statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

Below is a brief summary of the substantive amendments that were originally proposed for public comment.

The following amendments apply to Articles 8 (PSD areas) and 9 (nonattainment areas):

1. Provisions for electric utility steam generating units (EUSGUs) were added in order for the baseline state regulations to be consistent with the baseline federal regulations.
2. Requirements for determining whether physical changes made to existing emissions units trigger major NSR requirements were revised. Sources establishing their baseline actual emissions may now use any consecutive 24-month period during the five-year period prior to the change to determine the baseline actual emissions.
3. The method for determining if a physical or operational change will result in an emissions increase was revised. The previous "actual-to-potential" and "actual-to-representative-actual-annual" emissions applicability tests for existing emissions units have been replaced with an "actual-to-projected-actual" applicability test.
4. Provisions for pollution control projects (PCPs) were added. A PCP is an activity, set of work practices, or project at an existing emissions unit that reduces air pollution. Obtaining a PCP exclusion relieves the PCP from major NSR review. These new PCP provisions replaced the old PCP provisions of Article 6, which were removed.
5. Provisions for Clean Units were added. An emissions unit qualifies as a Clean Unit, and qualifies to use the Clean Unit control technology applicability test, if it has gone through major NSR permitting review and is complying with a BACT or LAER determination that has been subject to public participation. When a source undergoes NSR review and installs a BACT or LAER technology that has undergone public comment, it may make changes to a Clean Unit without triggering an additional major NSR review.
6. Provisions for plantwide applicability limits (PALs) were added. A PAL is a voluntary option that allows a source to manage emissions without triggering major new source review. The PAL program is based on plantwide actual emissions. If the emissions are maintained below a plantwide actual emissions cap, then the facility may avoid major NSR permitting process when it makes alterations to the facility or individual emissions units.

The following amendments are limited to specific articles:

7. Article 8 was revised in order to be consistent with other NSR regulations. This consists of (i) removing federal enforceability of certain provisions that should be enforceable by the state (toxics and odor) in order to prevent state-only terms and conditions from being designated as federally enforceable in a permit; (ii) deleting provisions covered elsewhere regarding circumvention, and reactivation and permanent shutdown; and (iii) adding provisions regarding changes to permits, administrative permit amendments, minor permit amendments, significant amendment procedures, and reopening for cause.
8. Article 6 (the minor NSR regulation) was revised to remove provisions for PCPs that would be covered by the changes to the major NSR regulations.
9. Article 4 of 9 VAC 5 Chapter 50, which contains general requirements for new and modified stationary sources, was revised to be consistent with the control technology provisions of Articles 8 and 9.

SUMMARY OF CHANGES TO PROPOSAL

Below is a brief summary of the substantive changes to the amendments that were originally proposed for Articles 8 (PSD areas) and 9 (nonattainment areas):

1. Provisions for pollution control projects (PCPs) have been removed. On June 24, 2005, the D.C. Circuit Court of Appeals remanded the PCP provisions, which therefore can no longer be legally implemented.
2. Provisions for Clean Units have been removed. On June 24, 2005, the D.C. Circuit Court of Appeals remanded the Clean Unit provisions, which therefore can no longer be legally implemented.

PROPOSED AMENDMENTS TO REGULATIONS CONCERNING CLEAN AIR

INTERSTATE RULE (9 VAC 5 CHAPTER 140, REV. E05) - Regulation Development Report and Request to Publish Proposal for Public Comment: On May 12, 2005 (70 FR 25162), EPA published the final Clean Air Interstate Rule (CAIR), designed to reduce the interstate transport of sulfur dioxide (SO₂) and nitrogen oxides (NO_x) across the eastern portion of the United States and help states and localities attain the 8-hour ozone and fine particles (PM_{2.5}) standards. CAIR covers 23 states and the District of Columbia for PM_{2.5} and 25 states and the District of Columbia for 8-hour ozone. Emissions of NO_x are capped at 2.5 million tons in 2009 and 1.3 million tons in 2015, and emissions of SO₂ are capped at 3.6 million tons in 2010 and 2.5 million tons in 2015. CAIR is effective July 11, 2005, except for provisions relating to the Acid Rain Program, which are effective July 1, 2006. The plans and associated regulations to implement the CAIR are due September 11, 2006.

States must achieve the required emission reductions using one of two compliance options: (i) meet the state's emission budget by requiring power plants to participate in an EPA-administered interstate cap and trade system that caps emissions in two stages, or (ii) meet an individual state emissions budget through measures of the state's choosing.

Virginia's budget portions of the national annual emissions caps are 36,074 tons in 2009 and 30,062 tons in 2015 of NO_x, and are 63,478 tons in 2010 and 44,435 tons in 2015 of SO₂. Virginia's ozone season budgets are 15,994 tons in 2009 and 13,328 tons in 2015 of NO_x.

The Department is requesting approval of a proposal for public comment that meets federal statutory and regulatory requirements. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

This regulatory action encompasses the establishment of three new parts to 9 VAC 5-140, each of which is addressed below. The numbers in the brackets are the last four digits of the corresponding section numbers from the applicable provision of 9 VAC 5 Chapter 140 [9 VAC 5-140-XXXX].

NO_x Annual Trading Program (Part II)

1. The regulation applies to electric generating units (EGUs) with a nameplate capacity greater than 25 MWe. An EGU is a fossil fuel-fired stationary boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale. [1040]
2. The control period is January 1 through December 31 of each year. [1020, definition of "control period"]
3. The NO_x annual trading budgets for EGUs are (i) 36,074 tons for each control period in 2009 through 2014, and (ii) 30,062 tons for each control period in 2015 and thereafter. [1400]
4. A new unit set-aside budget is included consisting of 5.0% of the EGU budget for each control period in 2009 through 2013 or 2.0% for each control period in 2014 and thereafter. [1420 C 1]
5. Provision for a voluntary public health set-aside to retire allowances is included. [1420 F]
6. Existing units are those commencing operation prior to January 1, 2006. [1420 A 1 a]
7. New units are those commencing operation on or after January 1, 2006. [1420 A 1 b]
8. Initial allocations (2009 – 2013) for existing EGUs are issued on October 31, 2006 and based on heat input (2001 – 2005) normalized over the state budget. [1410 A; 1420 A 1 a and 2 a, and B]
9. Subsequent allocations (2014 and thereafter) for existing EGUs are issued annually beginning October 31, 2009, five years in advance; and based on the preceding five years of heat input. [1410 B; 1420 A 1 a and 2 a, and B]
10. Allocations for existing EGUs are calculated using the baseline heat input, determined by averaging the three highest years of the preceding five years. [1420 A 1 a and 2 a]
11. Initial allocations (2009 – 2013) for new EGUs are issued on October 31, 2009 and based on

electrical output (2004 – 2008) normalized over the new unit set-aside budget. [1410 C; 1420 A 1 b and 2 b, C and E]

12. Subsequent allocations (2014 and thereafter) for new EGUs are issued annually beginning October 31, 2014 and based on the preceding five years of electrical output. [1410 D; 1420 A 1 b and 2 b, D and E]

13. Allocations for new EGUs are calculated using the converted heat input (electrical output), determined by averaging the three highest years of the preceding five years. [1420 A 1 b (1) and 2 b]

14. A compliance pool (5,134 tons) is established which allows for allocations from the pool for early reductions and to avoid an “undue risk to the reliability of electricity.” Allocations from the pool will be distributed to the sources prior to November 30, 2009. Allocations from the pool are valid for the 2009 control period only. [1430]

15. Compliance is determined by comparing the amount of allowances in the owner's account with the total amount of emissions from all of the affected units. [1060 C 1]

16. Use of allowances other than those allocated to the source by the board may not be used to comply in nonattainment areas. [1060 H, I and J]

17. Sources may bank any allowances not used during a specific control period. [1550]

18. Smaller sources within the core source categories are not mandated to be included in the program; however, smaller sources within the core source categories are allowed to opt-in to the program. [1800]

19. Sources that opt-in the program have a separate budget. Baseline determined for opt-ins is based upon the previous year's emissions. [1880]

20. All sources participating in the program, including those that chose to opt-in, must meet the monitoring requirements of 40 CFR Part 75 of the Code of Federal Regulations. [1060 B]

NO_x Ozone Season Trading Program (Part III)

1. The regulation applies to electric generating units (EGUs) with a nameplate capacity greater than 25 MWe. An EGU is a fossil fuel-fired stationary boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale. [2040 A]

2. The regulation also applies to non-electric generating units (non-EGUs) above 250 mmBtu. A non-EGU is a fossil fuel-fired stationary boiler or combustion turbine that (i) at no time serves a generator producing electricity for sale under firm contract to the grid or (ii) at any time serves a generator producing electricity for sale under firm contract to the grid, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit. [2040 B]

3. The control period is May 1 through September 30 of each year. [2020, definition of “control period”]

4. The NO_x ozone season trading budgets for EGUs are (i) 15,994 tons for each control period in 2009 through 2014, and (ii) 13,328 tons for each control period in 2015 and thereafter. [2400]

5. The NO_x ozone season trading budget for non-EGUs is 3,840 tons for each control period in 2009 and thereafter (reduced from the NO_x SIP Call budget of 4104 tons). [2405]

6. A new unit set-aside budget is included consisting of 5.0% of the EGU budget for each control period in 2009 through 2013 or 2.0% for each control period in 2014 and thereafter and 700 tons from the non-EGU budget. [2020, definition of “new unit set-aside budget”]

7. A set-aside for efficient energy/renewable energy sources is included consisting of 36 tons for each control period in 2009 and thereafter, which expire after three years. [2420 G]

8. Provision for a voluntary public health set-aside to retire allowances is included. [2420 H]

9. Existing units are those commencing operation prior to January 1, 2006. [2420 A 1 a]

10. New units are those commencing operation on or after January 1, 2006. [2420 A 1 b]

11. Initial allocations (2009 – 2013) for existing EGUs are issued on October 31, 2006 and based on heat input (2001 – 2005) normalized over the state budget. [2410 A; 2420 A 1 a and 2 a, and C]

12. Subsequent allocations (2014 and thereafter) for existing EGUs are issued annually beginning October 31, 2009, five years in advance; and based on the preceding five years of heat input. [2410 B; 2420 A 1 a and 2 a, and C]
13. Allocations for existing EGUs are calculated using the baseline heat input, determined by averaging the three highest years of the preceding five years. [2420 A 1 a and 2 a]
14. The allocations (2009 and thereafter) for existing non-EGUs are carried over from the NOx SIP call program, are set forth in the regulation, and are permanent. [2430]
15. Initial allocations (2009 – 2013) for new EGUs are issued on July 31, 2009 and based on electrical output (2004 – 2008) normalized over the new unit set-aside budget. [2410 C; 2420 A 1 b and 2 b, D and F]
16. Subsequent allocations (2014 and thereafter) for new EGUs are issued annually beginning July 31, 2014 and based on the preceding five years of electrical output. [2410 D; 2420 A 1 b and 2 b, E and F]
17. Allocations for new EGUs are calculated using the converted heat input (electrical output), determined by averaging the three highest years of the preceding five years. [2420 A 1 b (1) and 2 b]
18. Initial allocations (2009 – 2013) for new non-EGUs are issued on July 31, 2009 and based on heat input (2004 – 2008) normalized over the state budget. [2410 C; 2420 B, D and F]
19. Subsequent allocations (2014 and thereafter) for new non-EGUs are issued annually beginning July 31, 2014 and based on the preceding five years of heat input. [2410 D; 2420 B, E and F]
20. Allocations for new non-EGUs are calculated using the baseline heat input, determined by averaging the three highest years of the preceding five years. [2420 B 1 a]
21. Compliance is determined by comparing the amount of allowances in the owner's account with the total amount of emissions from all of the affected units. [2060 C 1]
22. Use of allowances other than those allocated to the source by the board may not be used to comply in nonattainment areas. [2060 H, I and J]
23. Sources may bank any allowances not used during a specific control period. [2550]
24. Smaller sources within the core source categories are not mandated to be included in the program; however, smaller sources within the core source categories are allowed to opt-in to the program. [2800]
25. Sources that opt-in the program have a separate budget. Baseline determined for opt-ins is based upon the previous year's emissions. [2880]
26. All sources participating in the program, including those that chose to opt-in, must meet the monitoring requirements of 40 CFR Part 75 of the Code of Federal Regulations. [2060 B]

SO₂ Annual Trading Program (Part IV)

1. The regulation applies to electric generating units (EGUs) with a nameplate capacity greater than 25 MWe. An EGU is a fossil fuel-fired stationary boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale. [3040]
2. The control period is January 1 through December 31 of each year. [3020, definition of “control period”]
3. The SO₂ annual trading budgets for EGUs are (i) 63,478 tons for each control period in 2010 through 2014, and (ii) 44,435 tons for each control period in 2015 and thereafter.
4. The program is administered almost in its entirety by EPA, including the allocations of allowances.
5. EPA has already allocated the allowances which are good indefinitely, except the value of the allowances is reduced over time. [3020, definition of “CAIR SO₂ allowance”]
6. The only role for the state is to issue the budget permits. [3200]
7. Compliance is determined by comparing the amount of allowances in the owner's account with the total amount of emissions from all of the affected units. [3060 C 1]
8. Sources may bank any allowances not used during a specific control period. [3550]
9. Smaller sources within the core source categories are not mandated to be included in the

program; however, smaller sources within the core source categories are allowed to opt-in to the program. [3800]

10. Sources that opt-in the program have a separate budget. Baseline determined for opt-ins is based upon the previous year's emissions. [3880]

11. All sources participating in the program, including those that chose to opt-in, must meet the monitoring requirements of 40 CFR Part 75 of the Code of Federal Regulations. [3060 B]

COMPARISON OF REGULATION AMENDMENTS WITH AD HOC ADVISORY GROUP PROPOSAL

The ad hoc advisory group recommended a number of changes and those recommendations are summarized below. The first five are included in both the NO_x Annual Trading Program and the NO_x Seasonal Trading Program but the remaining three are unique to the NO_x Seasonal Trading Program.

- To determine initial baseline heat input, use average of three highest years during most recent five years (2001 to 2005) instead of fixed period (2000 - 2004).
- To determine baseline heat input, remove fuel weighting provisions - one heat rate for all units.
- To determine baseline heat input for combined heat power (CHP) facilities, use same methodology for all technologies, fuels and units (both existing and new), consistent with the non-CHP methodology for existing units.
- Change date for existing/new source cutoff from January 1, 2001 to January 1, 2006.
- Initial allocations should be issued for five years (2009 – 2013); subsequent allocations should be issued six years in advance.
- Include provisions for a voluntary public health set-aside.
- Include non-EGU SIP Call Sources in the CAIR program.
- Reduce non-EGU trading budget in proportion to EGU budget (same % reduction from SIP call budget to CAIR budget).
- Include provisions for set-aside for efficient energy/renewable energy sources (1% of new source set-aside/allowances expire after three years).

The substantive differences between the Department recommendation and the ad hoc advisory group recommendation are as follows:

1. With regard to the set-aside for efficient energy/renewable energy sources, we took a different approach. Instead of taking 1% of new unit set-aside, we set a fixed amount of 36 tons per season (tps). Using 1% of new unit set-aside would result in an initial amount of 18 tps which would eventually fall to about 12.5 tps; this is because the new unit set-aside is a variable amount which eventually decreases. The 36 tps is being taken from the non-EGU new unit set aside which was transferred from the NO_x SIP Call program.

2. With regard to subsequent allocations, we took a different approach. Instead of setting out the allocations six years in advance, we used five years. The initial allocation is required to be for five years (2009 - 2013) by the Code of Virginia and is consistent with the recommendation of the ad hoc advisory group. Since the subsequent allocations are to be made in 2009, using an advance of six years would result in the first subsequent allocation occurring in 2015 and the allocations for 2014 would be omitted; thus we chose an advance of five years.

PROPOSED AMENDMENTS TO REGULATIONS CONCERNING CLEAN AIR MERCURY RULE (9 VAC 5 CHAPTERS 60 AND 140, REV. F05) - Regulation Development Report and Request to Publish Proposal for Public Comment: On May 18, 2005 (70 FR 28606), EPA published the Clean Air Mercury Rule (CAMR), a rule that will significantly reduce mercury emissions from coal-fired power plants across the country. The rule is designed to reduce the regional deposition of

mercury and its subsequent entry into the food chain. The final rule calls for an interim cap of 38 tons per year (tpy) of mercury emissions by 2010 and a second-phase cap of 15 tpy by 2018 (current emissions are approximately 48 tpy). CAMR is effective July 11, 2005, and the plans and associated regulations to implement the CAMR are due November 17, 2006.

The CAMR establishes “standards of performance” limiting mercury emissions from new and existing coal-fired power plants and creates a market-based cap-and-trade program that will reduce nationwide utility emissions of mercury in two distinct phases. The first phase cap, due in 2010, is 38 tons and emissions will be reduced by taking advantage of “co-benefit” reductions – that is, mercury reductions achieved by reducing sulfur dioxide (SO₂) and nitrogen oxide (NO_x) emissions under CAIR. In the second phase, due in 2018, coal-fired power plants will be subject to a second cap, which will reduce emissions to 15 tons upon full implementation.

In the CAMR, EPA has assigned each state an emissions “budget” for mercury, and each state must submit a plan detailing how it will meet its budget for reducing mercury from coal-fired power plants. The CAMR includes emissions guidelines for the affected coal-fired utility units. States have some flexibility in how they implement the program, but at a minimum, regulations must be at least as stringent as the guidelines.

Virginia's budget portions of the national annual emissions caps are 0.592 tons in 2010 and 0.234 tons in 2018.

The Department is requesting approval of a proposal for public comment that meets federal statutory and regulatory requirements. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

This regulatory action encompasses the addition of one new part to 9 VAC 5-140 and one new article to 9 VAC 5-60, each of which is addressed below. The numbers in the brackets are the last four digits of the corresponding section numbers from the applicable provision of 9 VAC 5 Chapter 60 [9 VAC 5-60-XXX] or 9 VAC 5 Chapter 140 [9 VAC 5-140-XXXX].

Coal Fired EGUs (Electric Steam Generating Units) [Part V of 9 VAC 5 Chapter 140]

1. The regulation applies to electric generating units (EGUs) with a nameplate capacity greater than 25 MWe. An EGU is a fossil fuel-fired stationary boiler or combustion turbine serving at any time a generator with nameplate capacity of more than 25 MWe producing electricity for sale. [4040]
2. The control period is January 1 through December 31 of each year. [4020, definition of “control period”]
3. The Hg budgets for EGUs are (i) 0.592 tons (1,184 lb.) for each control period in 2010 through 2014 and (ii) 0.234 tons (468 lb.) for each control period in 2015 and thereafter. [4100]
4. A new unit set-aside budget is included consisting of 5.0% of the EGU budget for each control period in 2010 through 2014 or 3.0% for each control period in 2015 and thereafter. [4020, definitions of “new unit set-aside budget” and “set-aside percentage”]
5. A public health set-aside budget to retire allowances is included consisting of 5.0% of the Hg budget for each control period in 2010 and thereafter. [4020, definitions of “public health set-aside budget” and “set-aside percentage”]
6. Existing units are those commencing operation prior to January 1, 2001. [4120 A 1 a]
7. New units are those commencing operation on or after January 1, 2001. [4120 A 1 b]
8. Initial allocations (2010 – 2014) for existing EGUs are issued on November 30, 2006 and based on the adjusted heat input normalized over the state budget. [4110 A; 4120 A 1 a and 2 a, and B]
9. Subsequent allocations (2015 and thereafter) for existing EGUs are issued annually beginning October 31, 2009, six years in advance; and based on the adjusted heat input. [4110 B; 4120 A 1 a and

2 a, and B]

10. Allocations for existing EGUs are calculated using the heat input, determined by averaging the three highest years of the years 2000 through 2004. [4120 A 1 a and 2 a]
11. Initial allocations (2010) for new EGUs are issued on October 31, 2010 and based on electrical output normalized over the new unit set-aside budget. [4110 C; 4120 A 1 b and 2 b, C and D]
12. Subsequent allocations (2011 and thereafter) for new EGUs are issued annually beginning October 31, 2011 and based on the first five years of electrical output. [4110 C; 4120 A 1 b and 2 b, C and D]
13. Allocations for new EGUs are calculated using the converted heat input (electrical output), determined by averaging the three highest years of the first five years of operation. [4120 A 1 b and 2 b]
14. Compliance is determined by comparing the amount of allowances issued to the owner with the total amount of emissions from all of the affected units located in the Commonwealth. [4060 A and C]
15. Use of allowances other than those allocated to the unit by the board may not be used to comply; except that those units under common control may sum the emissions and allowances from the affected units to determine compliance. [4060 A 3 and 4070]
16. All sources must meet the monitoring requirements of 40 CFR Part 75 of the Code of Federal Regulations. [4060 B]

Non EGUs [Article 6 of Part II of 9 VAC 5 Chapter 60]

1. The rule applies to all stationary sources, with some exemptions as noted below. [400 A]
2. Exempt sources include: [400 C]
 - A. Sources that have a potential to emit equal to or less than 0.000825 lb/hr or 7.25 lb/yr;
 - B. Generators or boilers that burn only natural gas, propane, or kerosene; and
 - C. Coal-fired EGUs and quarry or stone crushing operations.
3. The rule prohibits any emissions of mercury in such quantities as to cause, or contribute to, any adverse environmental impact. [420]
4. State operating permits will be used as the legally enforceable administrative mechanism to implement the rule. [430]
5. The rule allows the board to request such information as may be necessary to implement the rule and this information is to be submitted within 180 days. [440 A]
6. The rule allows the board to request stack tests as may be necessary to implement the rule and the results are to be submitted within 60 days. [440 B]
7. The rule allows the board to request an environmental assessment in order to determine if the source may cause, or contribute to, any adverse environmental impact. [450 A]
8. If the board believes, and notifies an owner, that the source may discharge emissions of mercury in such quantities as to cause, or contribute to, any adverse environmental impact, the owner shall choose one or more of the following options: [460 A]
 - A. Demonstrate that the emissions from the facility do not, and will not, cause, or contribute to any adverse environmental impact.
 - B. Control the emissions from the source (i) to a level such that the emissions from the facility do not, and will not, cause, or contribute to any adverse environmental impact or (ii) to a level that reflects the degree of emission limitation and the percentage reduction achievable through application of the best system of continuous emission reduction.
 - C. Demonstrate that a technology for the control of the emissions is unavailable and that no emission reduction can be achieved.
9. An owner has 45 days to notify the board as to which option in 8 A-C it will select and twelve months to submit a plan complete with schedule for the option chosen. [460 B]
10. Sources that choose options 8 A or C will, prior to the decision of the board on the acceptability of the demonstration, be subject to public participation procedures. [460 B]

COMPARISON OF REGULATION AMENDMENTS WITH AD HOC ADVISORY GROUP PROPOSAL

Because the ad hoc advisory group did not reach consensus on any regulatory issue, there are no recommendations as to the content of the regulation.

High Priority Violators (HPVs) for the Third Quarter, 2005

ACTIVE CASES — Table A *			
DEQ Region	Facility Name and location	Brief Description	Status
NRO	Lohmann Specialty Coatings, Inc., Orange County (specialty adhesives manufacturing facility)	Alleged construction of facility without obtaining NSR permit	NOV issued 7/11/05; Consent Order issued 2/22/05 requiring submission of a permit application and imposing a civil fine of \$13,600
NRO	Lohmann Specialty Coatings, Inc., Orange County (specialty adhesives manufacturing facility)	Alleged failure to pay civil fine imposed in 1/22/05 Consent Order	NOV issued 7/11/05; pending
NRO	Motiva Enterprises, LLC, Fairfax Terminal (petroleum liquid storage and distribution facility)	Alleged exceedances of VOC emission limits contained in Title V permit on approximately 146 days; failure to maintain data related to CEM maintenance, tank throughput, tank inspections, and tank vapor pressure readings; failure to maintain and repair emissions control equipment and other alleged violations of facility's Title V permit	NOV issued 5/26/05; pending
NRO	Potomac River Generating Station/Mirant, Alexandria (coal-fired electric power plant)	Alleged exceedance of ozone season NOx emission limit of 1,019 tons contained in state operating permit by over 1,000 tons	NOV issued 9/10/03; revised NOV issued 10/20/03; NOV issued by EPA 1/22/04; Consent Decree lodged with U.S. District Court in Alexandria 9/27/04 calling for ozone season NOx emission limits

			on Potomac River; Mirant system-wide ozone season NOx limits; .15 lbs/MMBtu system-wide ozone season NOx emission rate starting in 2008; system-wide annual NOx limits; \$1mil in coal yard dust/particulate projects at Potomac River; payment of \$500K civil fine
PRO	Carry-On Trailer Corporation, Callao, Northumberland County (trailer manufacturer)	Alleged exceedances of emissions limits and throughput limits for ethylbenzene, xylene, and 2-bytoxyethanol in violation of permit requirements; unpermitted modification of paint composition	NOV issued 4/13/04; Consent Order dated 09/19/05 imposed the development and implementation of an odor management plan and a civil fine of \$10,220
PRO	J.W. Ferguson and Sons, Inc. Richmond (rotogravure printing facility)	Alleged failure to certify and conduct relative accuracy audits on new monitors; failure to demonstrate 95% emission reduction efficiency; failure to maintain monitoring equipment; failure to properly train personnel in violation of facility's Title V permit and certain MACT requirements	NOV issued 5/31/05; Consent Order dated 10/31/05 required development and implementation of a comprehensive QA/QC plan for CEMS System, Employee training, and testing of CEMS system. A civil fine of \$22,200 was imposed, of which \$3000 goes toward a SEP. The SEP will be installation of an automated alarm system which will shutdown production when parameters indicate potential non compliance or if a monitor fails
PRO	Pre Con, Inc., Petersburg (polyolefin fiber laminates manufacturer)	Alleged failure to install and maintain air pollution control equipment; failure to conduct initial performance test within prescribed time; failure to submit certain reports required under Title V permit and NSPS regulations	NOV issued 5/21/05; Consent Order dated 11/08/05 required the installation of monitoring equipment, development of O&M plan , quarterly reporting and a civil fine of \$27,700

SCRO	Internet Archer Creek Foundry, Campbell County (ductile iron castings manufacturer)	Alleged exceedances of opacity limits at cupola amrex baghouse (5% limit – 12.7% observed) and at ETA baghouse (20% limit – 33.54% observed)	NOV issued 7/19/04; Consent order dated 5/18/03 imposed civil fine of \$15,170, of which \$11,377 will go to the installation of a baghouse to control particulate and visible emissions from a previously uncontrolled mold cooling operation
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SWRO	Galax Energy Concepts, LLC Galax, Carroll County (wood burning power plant)	Alleged violations of lbs/hr and lb/mmBtu emission limits for particulate matter for the facility's 3 boilers resulting from stack tests performed in March '05 under low-load and high-load conditions; exceedances ranged from 15% over the limit to 245% over the limit	NOV issued 4/18/05; pending
TRO	Sentara Virginia Beach General Hospital	Installation of a boiler without first obtaining a minor new source review permit	NOV issued 8/2/05; pending
VRO	Harrisonburg Resource Recovery Facility (municipal waste incinerator)	Alleged exceedance of HCL emission limits discovered during stack test (25 ppmdv limit – 30.84 ppmdv observed)	NOV issued 7/22/05; pending
VRO	Harrisonburg Resource Recovery Facility (municipal waste incinerator)	Alleged violations of various requirements of facility's Title V permit, including failure to maintain carbon feed rate necessary to control HAP emissions; failure to notify DEQ of low carbon feed rate; failure to maintain records of daily observations of fabric filters	NOV issued 9/16/06; pending
VRO	Merck & Co., Inc., Rockingham County (pharmaceutical manufacturer)	Alleged exceedance of emission limit for methyl chloride in synthetic minor HAP permit by over 4.5 tons; failure to adequately measure wastewater influent for HAPs as required by permit	NOV issued 12/11/03; Consent Order dated 7/8/05 imposed various injunctive measures to control toxics emissions and a civil fine of \$500,000, of which \$300,000 goes toward a SEP calling for retrofitting Rockingham County and Harrisonburg City school buses with control devices for particulates and other pollutants
VRO	PolyOne Engineered Films, Winchester (film manufacturer)	Alleged failure to maintain control efficiencies for PM and VOC emission control system required by NSR	NOV issued 8/25/05; pending

		permit (42.9% control efficiency required for both PM and VOC; 7.58% (PM) and 25.42% (VOC) efficiencies observed); failure to demonstrate compliance with emissions limits within 60 days of achieving full production as required by NSR permit	
WCRO	Bassett Furniture Industries, Plant 11, Henry County (wood furniture manufacturing facility)	Alleged failure to provide documentation to demonstrate compliance with MACT work practice requirements related to the testing of the pressure of HPLV guns	NOV issued 9/13/05; pending
WCRO	Magnox Pulaski Inc., Pulaski, Pulaski County (magnetic tape manufacturer)	Numerous alleged violations of Title V permit recordkeeping, monitoring, and operational requirements	NOV issued 5/8/03; Consent Order dated 7/28/04 imposed civil fine of \$20,668 and requires SEP valued at no less than \$14,468 to reduce CO emissions through process changes
WCRO	Southern Finishing Co., Martinsville, Henry County (furniture manufacturer)	Alleged violations of, among other things, MACT subpart JJ work standards and recordkeeping requirements; installation of wood spray booth w/o permit; defective spray booth filters; failure to conduct periodic monitoring and inspections; failure to submit compliance certification and other required reports; failure to complete SEP required by 11/17/03 Consent Order	Dual NOVs issued 4/11/05 and 6/3/04; Consent Order dated 8/31/05 imposed civil fine of \$161,870, of which \$145,683 goes toward an innovative pollution prevention SEP calling for the elimination of hazardous air pollutants (HAPs) within 2 yrs from finishes and coatings used in the facility's wood furniture production lines

* **Table A includes the following categories of HPV cases:**

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

RESOLVED CASES — Table B **			
DEQ Region	Facility Name and location	Brief Description	Status
PRO	Virginia State University, Petersburg (educational institution)	Alleged failure to stack test boiler; failure to install, maintain, and operate continuous opacity monitors; failure to perform visual opacity inspections; various recordkeeping violations	NOV issued 5/28/04; Executive Compliance Agreement dated 8/17/05 requiring additional stack testing (civil fines are not imposed on state agencies)
WCRO	Cinergy Solutions of Narrows, LLC, Narrows, Giles County (power plant)	Recurrent alleged exceedances of opacity limits	NOV issued 2/16/05; Consent Order dated 8/1/05 imposed civil fine of \$1,330

**** Table B includes HPV cases resolved by Consent Order during the third quarter of 2005 where the alleged violator has complied with substantially all of the terms of the Consent Order.**