

TENTATIVE AGENDA AND **REVISED** MINIBOOK
(Additional Information on Pages 4 through 9)
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, JUNE 8, 2012
GENERAL ASSEMBLY BUILDING
HOUSE ROOM C
9TH & BROAD STREETS
RICHMOND, VIRGINIA

Convene – 10:00 a.m.

I.	Review and Approve Agenda		TAB
II.	Minutes (March 23, 2012)		A
III.	Regulations (Final Exempt)		
	Title V Fees (Rev. D12)	Graham	B
	Transportation Conformity (9VAC5-151, Rev. C12)	Major	C
	Sewage Sludge Incinerators (9VAC5-40, Rev. B12)	Sabasteanski	D
IV.	High Priority Violators Report	Nicol	E
V.	Public Forum		
VI.	Other Business		
	Legislative Update	Jenkins	
	Air Division Director's Report	Dowd	
	Future Meetings		

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.

Title V Fees (Rev. D12) - Request for Board Action on Exempt Final Regulation: On December 16, 1994, the board adopted regulations to collect program emission fees sufficient to cover the permit programs required by Title V of the federal Clean Air Act. Article 2 (Permit Program Fees for Stationary Sources) of 9VAC5-80 (Permits for Stationary Sources) became effective on April 1, 1995 and charged a fee of \$25 per ton of air pollutant emissions, adjusted annually every year since 1990 for increases in the Consumer Price Index. On June 29, 2004, the board adopted a regulation to collect permit application fees for major new source review (major NSR) permit program costs. Article 10 (Permit Application Fees for Stationary Sources) of 9VAC5-80 became effective on July 1, 2004.

Under the current fee structure fees are tied to emissions and as emissions have gone down over time, so too have revenues collected from this program. Although revenues have decreased, the costs of the program have remained relatively flat while the responsibility of the program has increased due to the increasing number of Federal regulations and requirements.

In the 2012 Appropriation Act (item 365, subsection B), the General Assembly required that the board adopt regulations adjusting permit program emissions fees and establishing permit application processing fees and permit maintenance fees sufficient to ensure that revenue covers total direct and indirect program costs. All of the fees are to be adjusted annually by the Consumer Price Index. Other provisions of the Act required that (i) all emission fees are to be collected annually, (ii) the initial adjustment of emission fee rates shall not exceed 30 percent over current rates, (iii) permit application fees shall not be credited toward the amount of emission fees owed, (iv) regulations adopted to implement the provisions of this item shall be exempt from the Administrative Process Act, and (v) the regulations are to be effective no later than July 1, 2012.

The department is requesting approval of draft final regulation amendments that meet federal and state 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 and Virginia law.

These regulations are necessary to conform to Virginia statutory law, which requires that the regulations be exempt from the standard regulatory process (Chapter 40, Title 2.2, Administrative Process Act of the Code of Virginia) by the provisions of budget item 365, subdivision B 2 of the 2012 Appropriation Act.

Notice that the regulations would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

To solicit comment from the public on the proposed regulation amendments, the department issued a notice that provided for receiving informal comment. The summary and analysis of public testimony will be provided before the board meeting.

Below is a brief summary of the substantive amendments the department is recommending be made to the Regulations for the Control and Abatement of Air Pollution, 9VAC5-80 (Permits for Stationary Sources).

1. Article 2 (9VAC5-80-310 et seq.) of 9VAC5-80 (Permits for Stationary Sources) requires that permit program fees be paid by sources subject to Title V of the federal Clean Air Act on the basis of air pollutant emissions. The name of the annual permit program fee in Article 2 is changed to clarify that these fees are emissions fees and not application fees or maintenance fees. The base amount for calculating annual permit program emission fees is increased from \$25 per ton of emissions to \$31.22 per ton, resulting in an initial emission fee rate increase of less than 30% over current rates. Various other changes are made to Article 2: (i) to remove outdated provisions; (ii) to correct the minimum threshold for payment, (iii) to correct references and format; (iv) to allow other modes of payment; and (v) to clarify certain actions under the regulation.

2. Article 10 (9VAC5-80-2250 et seq.) of 9VAC5-80 (Permits for Stationary Sources) requires that application fees be assessed for certain types of air permit applications. Permit application fees are expanded to include fees for all types of permits that make a stationary source subject to permit requirements under Title V and all types of permits that would remove a stationary source that is otherwise subject to Title V permit requirements from applicability under Title V. A method of making annual adjustments to the application fees for changes in the Consumer Price Index (CPI) is added, and the annual permit program emission fee credit for the cost of the permit application fees is removed. The types of permits to which permit application fees apply and the process for paying the fees has been clarified.

3. Annual permit maintenance fees are established in a new Article 11 (9VAC5-80-2310 et seq.) of 9VAC5-80 (Permits for Stationary Sources) for (i) all stationary sources operating under either permit requirements or a permit

application shield issued pursuant to Title V, or (ii) all sources operating under federally enforceable permits issued to keep a stationary source from applicability under permit requirements of Title V. The method of determining and adjusting the permit maintenance fee amounts annually for changes in the CPI is specified. The process for assessing, billing, and paying the fees is also specified.

UPDATED INFORMATION ON REVISION D12:

SUMMARY AND ANALYSIS OF PUBLIC COMMENT FOR REGULATION REVISION D12 CONCERNING TITLE V FEES (9VAC5 CHAPTER 80)

INTRODUCTION

The 2012 Appropriation Act, Item 365 B directed the Board to adopt regulations to adjust permit program emissions fees, establish permit application processing fees, and establish permit maintenance fees sufficient to ensure that the revenues collected from fees cover the total direct and indirect costs of the program consistent with Title V of the federal Clean Air Act (CAA). It also specified that the regulations adopted by the Board to initially implement those requirements shall be exempt from the Administrative Process Act, Code of Virginia, Chapter 40 of Title 2.2 (APA).

The Department held an informal 10-day public comment period beginning on May 16, 2012. The proposed regulation amendments subject to that comment period are summarized below, followed by a summary of the public participation process and an analysis of the public testimony, along with the basis for the decision of the Board.

SUMMARY OF PROPOSED AMENDMENTS

The proposed regulation amendments concerned provisions covering Title V (federal operating permit program) fees. A summary of the amendments follows:

1. Article 2 (9VAC5-80-310 et seq.) of 9VAC5-80 (Permits for Stationary Sources) requires that permit program fees be paid by sources subject to Title V of the federal Clean Air Act on the basis of air pollutant emissions. The name of the annual permit program fee in Article 2 is changed to clarify that these fees are emissions fees and not application fees or maintenance fees. The base amount for calculating annual permit program emission fees is increased from \$25 per ton of emissions to \$31.22 per ton, resulting in an initial emission fee rate increase of less than 30% over current rates. Various other changes are made to Article 2: (i) to remove outdated provisions; (ii) to correct the minimum threshold for payment, (iii) to correct references and format; (iv) to allow other modes of payment; and (v) to clarify certain actions under the regulation.
2. Article 10 (9VAC5-80-2250 et seq.) of 9VAC5-80 (Permits for Stationary Sources) requires that application fees be assessed for certain types of air permit applications. Permit application fees are expanded to include fees for all types of permits that make a stationary source subject to permit requirements under Title V and all types of permits that would remove a stationary source that is otherwise subject to Title V permit requirements from applicability under Title V. A method of making annual adjustments to the application fees for changes in the Consumer Price Index (CPI) is added, and the annual permit program emission fee credit for the cost of the permit application fees is removed. The types of permits to which permit application fees apply and the process for paying the fees has been clarified.
3. Annual permit maintenance fees are established in a new Article 11 (9VAC5-80-2310 et seq.) of 9VAC5-80 (Permits for Stationary Sources) for (i) all stationary sources operating under either permit requirements or a permit application shield issued pursuant to Title V, and (ii) certain sources operating under federally enforceable permits issued to keep a stationary source from applicability under permit requirements of Title V. The method of determining and adjusting the permit maintenance fee amounts annually for changes in the CPI is specified. The process for assessing, billing, and paying the fees is also specified.

SUMMARY OF PUBLIC PARTICIPATION PROCESS

Although this regulatory action was specifically exempt from public participation requirements of the APA by the 2012 Appropriation Act, an informal public comment period was advertised by a General Notice published on the Virginia Regulatory Town Hall on May 16, 2012, email notices sent out by the Town Hall to registered users, and posting to the Department website. In addition, personal notice of this hearing and the opportunity to comment was emailed by the Department to individual stakeholders who participated in a stakeholder group to discuss Title V fees in

2010 and others who have expressed interest in the issue. Eight sets of written comments were received during the public comment period prior to its close on May 25, 2012. The complete text of each person's comments is on file at the Department.

ANALYSIS OF COMMENTS

Below is a summary of the comments received and the accompanying analysis. Included is a brief statement of the subject, the identification of the commenter, a summary 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 Department 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 intended purpose of the regulation.

1. **SUBJECT:** Support for the proposed regulation amendments.
COMMENTERS: Dominion Resources Services, Old Dominion Electric Cooperative (ODEC), Virginia Independent Power Producers (VIPP), Virginia Manufacturers Association (VMA), Hampton Roads Sanitary District (HRSD), Appalachian Power (APCo).
COMMENTS: Dominion supports the DEQ's recommended revisions to the Title V permit fees – in particular the new "fees for service" or permit application fees. Although we would prefer not to incur additional fee increases, the proposed fee structure represents a balanced consolidation of the various approaches deliberated by the Stakeholder Group.

ODEC and the VMDAEC offer our support for the proposed regulation as it is presented to the Board for approval. ODEC believes that this is a realistic approach to adjustments in the overall fee structure. The proposed changes to the appropriate sections of 9VAC5 Chapter 80 are consistent with the recommendations from the Stakeholders Workgroup in 2010 and additional meetings in 2011. We appreciate the DEQ's effort to move from a fee structure based almost entirely on emissions to one which incorporates the 3-prong approach of emissions fees, application fees, and annual maintenance fees.

On behalf of its membership the VMA supports the adoption of these new regulations.

VIPP largely agrees with the proposed changes to 9VAC5 Chapter 80, with one important exception, identified in comment 5 below. VIPP agrees with the recommendation that the new permit application fees be imposed. Permit applicants should be required to pay fees proportionate to the effort required to evaluate and process permit applications. VIPP also agrees with the recommendation that new annual maintenance fees be imposed. The maintenance fees proposed appear to be proportionate to the effort required to maintain existing permits.

HRSD thinks the premise for and structure of the fees is appropriate.

APCo believes the new fee structure has been developed through a collaborative process that attempts to address the concerns of the regulated community while at the same time achieving the funding needs for the program. The new fee structure adapts to the reductions in emission levels that have been achieved, and provides for a more sustainable means of providing adequate funding for the program in the future. DEQ should be commended for its facilitation of stakeholder meetings on this issue, and the efforts that it made to find a workable solution to address the deficit in funding for the Title V Permit Program.

RESPONSE: Support for the proposal is appreciated. No changes are made to the proposal in response to these comments.

2. **SUBJECT:** Use of Title V fees.
COMMENTER: Titan America LLC (Titan).
COMMENT: The proposed regulations indicate that emission fees collected shall not be used for any purpose other than is provided in Title V of the CAA and associated regulations and policies. The

proposed regulatory sections for permit application fees and annual permit maintenance fees do not ensure similar restrictions on the use of fees collected under this program. All fees collected under this proposed fee structure should be restricted for use in the appropriate program.

RESPONSE: In 9VAC5-80 Article 10 (Permit Application Fees for Stationary Sources), the proposed subsection 9VAC5-80-2270 B restricts the use of application fees to Title V program purposes. Similarly, in Article 11 (Annual Permit Maintenance Fees for Stationary Sources), the proposed subsection 9VAC5-80-2330 B restricts the use of permit maintenance fees to Title V program purposes. No changes are made to the proposal in response to this comment.

3. **SUBJECT:** Use of excess fees.

COMMENTERS: Titan, ODEC.

COMMENTS: Titan believes that any excess collected fees beyond actual program costs should be applied to the following year and the annual CPI factor applied to fees should be reduced accordingly.

ODEC would like to stress that the program administration recognize the fact that if there is more revenue generated in a particular area than initially anticipated, there should be a reduction reflected in fees elsewhere within the program. The regulations as drafted can and do provide for that type of adjustment. DEQ should be doing ongoing evaluation of program funding with active comparison of actual revenue versus these estimates.

RESPONSE: The statutory language in Item 365 B of the 2012 Appropriation Act does not provide for modification of the CPI adjustment based upon a prior year's fee revenue. Because revenue from permit application fees and permit maintenance fees is predicted to be small in relation to emissions fees, adjustment of emission fees is a better way to balance excess revenue and this adjustment is already provided for in Article 2 of 9VAC5-80. No changes are made to the proposal in response to these comments.

4. **SUBJECT:** Emission fees from major sources should cover all program costs.

COMMENTER: Titan.

COMMENT: The emission fees should be set to cover the cost of the Title V major source program.

RESPONSE: All costs of the Title V program are required to be covered by fees, including emission fees. The Virginia General Assembly has directed that these costs be covered by permit application fees and permit maintenance fees as well as emission fees. As noted in the response to Comment 5 below, sources subject to the emissions fees will pay for their emissions up to 4,000 tons for each pollutant consistent with state law. Under this proposal, major emitters also will likely pay higher fees for permit applications and will generally pay higher permit maintenance fees because of their complexity. No changes are made to the proposal in response to this comment.

5. **SUBJECT:** Raise the 4,000 ton emission fee cap.

COMMENTERS: Titan, VIPP.

COMMENTS: The cap on 4,000 tons per year for the emissions fee should be removed. These additional fees for the emissions over 4,000 tons per year should offset the per-ton fee rate and/or the annual permit maintenance fees. The cap excuses and excludes emissions in excess of 4,000 tons, which confers a significant financial benefit on the largest emitters and penalizes smaller emission sources. Eliminating or raising the cap would provide an economic benefit for larger sources to minimize emissions, would lower the per ton assessments, would inject fairness into an emission fee assessment scheme that has penalized smaller emitters for years, and would comply with the federal Clean Air Act and the legislature's budget directive.

The current 4,000 ton "cap" on emissions fee assessments should be eliminated or raised. In addition to being inherently unfair, the 4,000 ton cap sends a perverse economic signal favoring larger emitters at the expense of smaller sources. Removing or raising the cap on assessments would fully comply with the legislature's directive to the Board contained in budget language.

RESPONSE: The stakeholder group that met during 2010 discussed changing the cap at length and was unable to reach consensus on this issue. The language in item 365 B of the 2012 Appropriation

Act is specific about the changes it allows to the statutory requirements in § 10.1-1322 of the Code of Virginia. The Department believes that the budgetary language does not authorize a change to, or the removal of, the 4000 ton cap on emissions charged set forth in § 10.1-1322 of the Virginia Code. No changes are made to the proposal in response to these comments.

6. **SUBJECT:** Don't shift major source permit costs to minor sources.
COMMENTER: Titan.
COMMENT: The proposed fee structure should ensure that the fees collected from Title V major source programs cover the full cost associated with managing those major facility permits. Fees on minor sources should not be used to subsidize major permit costs.
RESPONSE: See the response to comment 4. No change is made to the proposal in response to this comment.
7. **SUBJECT:** No application fees for like-for-like equipment replacements.
COMMENTER: Titan.
COMMENT: Regulatory language should be included to treat like-for-like equipment replacements as administrative amendments not subject to permit amendment or permit modification application fees. Like-for-like equipment replacements would not increase emissions and would not change permit monitoring or reporting conditions.
RESPONSE: Like-for-like replacements are normally exempt from minor new source review (NSR) permit requirements in Article 6 of 9VAC5-80, and if so, are not subject to those permit application fees if any changes to the permit that are necessary can be made as an administrative amendment. If like-for-like replacements become subject to major NSR program permit requirements (under Articles 7, 8 or 9 of 9VAC5-80) or are subject to permit requirements under the Title V federal operating permit program (Articles 1 or 3 of 9VAC5-80) for that replacement, they may be subject to permit application fees. No change is made to the proposal in response to this comment.
8. **SUBJECT:** Don't levy application fee increases on sources operating under a Title V permit shield.
COMMENTER: Titan.
COMMENT: The regulations for application fees indicate that facilities that submitted a permit application prior to the date of the regulations would not be subject to the new fee schedule, except if an amendment to the permit application is requested after the date of the regulations. The DEQ should defer this fee increase for facilities that submitted timely Title V renewal applications prior to the date of the regulation and have been operating under a permit shield, in some cases for several years, because the DEQ has prioritized resources on other permit issues.
RESPONSE: The permit application fee for a Title V permit renewal submitted prior to the effective date of the regulation will not be charged an application fee. However, changes to that application made by the owner will require additional work by the Department, so changes made to that application after the effective date of the regulation should normally result in the application becoming subject to the new renewal application fee. The amount of time the Department spends processing the original renewal application would not normally make the application subject to new fees. However, in order to provide some flexibility for the Department to defer the increased fee, a change has been made to the proposal to reflect the intent of this comment.
9. **SUBJECT:** Program monitoring and program changes may be needed in the future.
COMMENTERS: ODEC, VMA.
COMMENT: DEQ should continue to be forthcoming with information regarding the various revenue streams and the specific level of effort by DEQ staff to administer the programs. This is not likely a long term solution to the issue of funding DEQ's permit programs. Constant improvement and streamlining is always possible within large organizations or programs.

The regulations represent a temporary fee adjustment and will require further adjustment on a regular basis. It may be necessary to review all air fees that are associated loosely with the Title V fee program for equity. This will require the Department of Environmental Quality to continue to develop

a cost of service for all of their activities related to the title V program. Additionally a stakeholder group must be established to work with the Department of Environmental Quality to develop process improvements that are mutually beneficial.

RESPONSE: The Department continuously reviews this program as well as its other programs for opportunities for implementing further efficiencies and welcomes input from stakeholders toward this effort. This is an ongoing process. Should the proposed fees prove insufficient for funding the Title V permit program in the future, the Department will, as it has in the past, utilize stakeholder processes to help inform any needed reconfiguration of the fee structure consistent with the law. No changes are made to the proposal in response to these comments.

10. **SUBJECT:** Implementing the new fees in August 2012 is inappropriate.

COMMENTER: HRSD.

COMMENT: Requiring the new and/or increased fees on such short notice creates an undue hardship. Neither HRSD nor any regulated source has budgeted for the new fees. Additionally, the new annual fee will catch the SM-80 sources entirely by surprise because the SM-80 sources will be paying Title V permit program fees for the first time ever. These sources may also very well be small businesses that can ill afford any unplanned expense. That will require us, and possibly others, to take funds from other budgets to pay the difference. The new fees should be implemented as of August 1, 2013.

RESPONSE: Federal law and regulation, as well as state law, require that the costs of the Title V programs be fully funded through fees. In the absence of these proposed fee adjustments, the program will no longer fully fund itself during the 2013 fiscal year. Item 365 C of the 2012 Appropriation Act specifically requires that the new program funding requirements be implemented and effective no later than July 1, 2012. While the new fee structure will create some hardships, some provisions have been included to mitigate those hardships on the smallest companies. First, only the larger synthetic minor sources will be assessed permit maintenance fees. Second, the 10 ton minimum for emission fees has been retained. Third, the maintenance and application fee structure has been designed to reflect the actual costs of processing and maintaining permits, which favors smaller sources with simpler permits. Given the statutory requirements, this proposal is the best option for apportioning the costs of the Title V program. No changes are made to the proposal in response to this comment.

11. **SUBJECT:** Concern about future changes to the Title V permit program.

COMMENTER: APCo.

COMMENT: APCo also has concerns that as the scope of regulatory programs expands to greenhouse gas emissions, the current situation could be reversed, with emission fees significantly increasing and potentially exceeding the cost of the program. The draft final regulation does include protections to guard against this potential, but this will be an issue that APCo will closely watch under the new fee structure.

RESPONSE: The current regulation contains provisions for reducing emission fees to ensure that program emission fees do not become excessive. Item 365 C of the 2012 Appropriation Act requires adoption of regulations to ensure that revenues generated from fees cover the full costs of the program. At this time, emissions of greenhouse gases are not subject to emissions fees. It is unclear at this time whether greenhouse gas emissions will become subject to emissions fees under federal law in the future or, if so, to what extent. It would be premature at this time to adjust fee requirements based on future, uncertain Federal requirements associated with greenhouse gas emissions. The current regulation contains provisions for reducing emission fees to ensure that program emission fees do not become excessive relative to the costs of the program. No changes are made to the proposal in response to this comment.

12. **SUBJECT:** The higher costs associated with the new fees creates a hardship for customers.

COMMENTER: APCo.

COMMENT: The new Title V fee structure will increase costs to APCo, which causes us great concern as our customers continue to struggle with higher energy cost.

RESPONSE: Federal law and regulation, as well as state law, require that the costs of the Title V programs be fully funded by fees. In the absence of these proposed fee adjustments, the program will no longer fully fund itself during the 2013 fiscal year. The Department appreciates the concerns expressed by this comment and continuously reviews this program, as well as its other programs, for opportunities for implementing further efficiencies. No changes are made to the proposal in response to this comment.

13. **SUBJECT:** Higher costs creates a hardship for businesses.

COMMENTER: MASCO Cabinetry LLC.

COMMENT: These large, sudden, and previously unbudgeted Title V permit program fee increases, as proposed, would severely injure wooden cabinetry manufacturers that are struggling in a weak market. In addition, the prospect of such fee increases raises a question about whether new business ventures might hesitate to locate in Virginia, thus leaving established industries with excessive regulatory costs. We hope that more suitable alternatives can be developed.

RESPONSE: See the response to comment 10. No changes are made to the proposal in response to this comment.

RECOMMENDED REVISION TO REGULATORY TEXT IN ARTICLE 10, 9VAC5-80--2250 C

C. The provisions of this article shall not apply to the following:

1. ~~Applications for permits for reconstruction of all or part of any stationary source, providing that the application is not otherwise subject to permit application fees pursuant to the provisions of subsection A of this section.~~

~~2. Applications that are deemed complete received by the appropriate regional office prior to July 1, 2004 (insert effective date of regulation) except that applications that are received prior to (insert effective date of regulation) and are amended on or after (insert effective date of regulation) [shall may] be subject to the permit application fee due as if the application was received on or after (insert effective date of regulation) less any permit application fee amount paid for that application prior to (insert effective date of regulation). The provisions of 9VAC5-80-2290 apply to amended permit applications.~~

~~2. Applications for an administrative permit amendment or an administrative permit modification to an existing permit.~~

~~3. Applications for permits or changes to permits for a true minor source.~~

Transportation Conformity (9VAC5 Chapter 151, Rev. C12) –Request for Board Action on Exempt Final Regulation: The federal Clean Air Act requires that federally-funded transportation plans, programs and projects conform to state air quality implementation plans (SIPs). Metropolitan planning organizations and the United States Department of Transportation must demonstrate that such plans, programs, and projects conform to Virginia's SIP. "Conformity" means that the activity conforms to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards, and will not (i) cause or contribute to any new violation of any standard, (ii) increase the frequency or severity of any existing violation of any standard, or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones. Under 40 CFR 51.390, Virginia is required to submit to the U.S. Environmental Protection Agency (EPA) a revision to the SIP that establishes conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA at 40 CFR Part 93.

EPA promulgated amendments to the federal transportation regulation on March 14, 2012 (77 FR 14979). In this action, EPA amended the transportation conformity rule to make the rule apply to any future new or revised national ambient air quality standards (NAAQS). The rule restructures two sections of the transportation conformity rule, 40 CFR 93.109 and 93.119, so that existing requirements will apply for any new or revised NAAQS.

Since transportation conformity applies for the NAAQS for which an area is designated nonattainment, the EPA change also allows PM_{2.5} areas with clean air quality data to take advantage of conformity flexibilities that are currently available only to ozone areas.

In order to implement the federal transportation conformity requirements, the Virginia regulation must reflect the recent revisions made to the federal regulations. To this end, 9VAC5 Chapter 151 of the regulations needs to be amended to include the most recent federal revisions.

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

Because the state regulations are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations, the state regulations are exempt from all state public participation requirements under the provisions of § 2.2-4006 A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the state public participation requirements and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. In adopting the regulation amendments under the provisions of § 2.2-4006, the Board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Below is a brief summary of the substantive amendments the department is recommending be made to the regulation.

1. The general section [9VAC5-51-40] incorporates by reference portions of the EPA Regulation for Transportation Conformity (40 CFR Part 93) into the state regulation. This section also indicates that the specific version of the provisions adopted by reference are those contained in the most currently available CFR in effect as published on July 1, 2010. Changes have been made to update the CFR reference to July 1, 2012, which includes the recent Federal Register notice of March 14, 2012.
2. The consultation section [9VAC5-151-70] outlines specifically how the various government agencies, federal, state and local, will interact with and consult with each other and the general public in the development of transportation plans and associated conformity determinations. One change has been made; the reference in 9VAC5-151-70 D 1 f has been changed from 40 CFR 93.109(n)(2)(iii) to 40 CFR 93.109(g)(2)(iii).

Sewage Sludge Incinerators (9VAC5 Chapter 40, Rev. B12) - Request for Board Action on Exempt Final

Regulation: Designated pollutants are pollutants for which new source performance standards have been established under § 111(b) of the federal Clean Air Act. A designated facility is an existing facility which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the facility were new. Under § 111(d) of the Act, the U.S. Environmental Protection Agency (EPA) is required to establish procedures for states to submit plans to control facilities that emit designated pollutants. These procedures are established in Subpart B of 40 CFR Part 60.

Section 129 requires that EPA establish performance standards and other requirements pursuant to § 111 and § 129 for each category of solid waste incineration units. Such standards include emissions limitations and other requirements applicable to new units and guidelines and other requirements applicable to existing units. It also requires states to submit plans for these sources in a process similar to that in § 111(d).

Subpart B of 40 CFR Part 60 provides that EPA publish guideline documents for development of state emission standards after promulgation of any standard of performance for designated pollutants. These emission guidelines reflect the degree of emission reduction attainable with the best adequately demonstrated systems of emission reduction, considering costs, applied to existing facilities.

EPA established emission guidelines for sewage sludge incinerators in the Federal Register of March 21, 2011 (76 FR 15372). In order to implement the emission guidelines, it is necessary for Virginia to develop and adopt a state regulation containing those emission standards. These standards are needed in order to control the emissions generated by sewage sludge incinerators--particulate matter, hydrogen chloride, carbon monoxide, dioxin/furan, mercury, nitrogen oxides, sulfur dioxide, cadmium, and lead--to a level needed to protect public health and welfare.

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

Because the state regulations are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations, the state regulations are exempt from the standard regulatory adoption process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the standard regulatory adoption process and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. Further, in adopting the regulation amendments under the provisions of § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Notice that the regulation would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

Below is a brief summary of the substantive regulatory provisions.

1. The list of federal documents incorporated by reference has been updated to reference the most recent (2012) version. [9VAC5-20-21 B, page 1]
2. The affected facilities to which the provisions of this article apply are specified. [9VAC5-40-8200, page 12]
3. Definitions needed to implement the regulation are described or referenced. [9VAC5-40-8210, page 13]
4. Emission limits and emission standards as required by 40 CFR 60.5165 are specified. [9VAC5-40-8220, page 13]
5. Provisions for visible emissions are established. [9VAC5-40-8230, page 13]
6. Provisions for fugitive dust/emissions are established. [9VAC5-40-8240, page 14]
7. Provisions for odor are established. [9VAC5-40-8250, page 14]
8. Provisions for toxic pollutants are established. [9VAC5-40-8260, page 14]
9. Operator training requirements are specified. [9VAC5-40-8270, page 14]
10. A compliance schedule is provided. [9VAC5-40-8280, page 14]
11. Operating requirements are specified. [9VAC5-40-8290, page 14]
12. Compliance provisions are established. [9VAC5-40-8300, page 15].
13. Performance testing, monitoring, and calibration requirements are established. [9VAC5-40-8310, page 15]
14. Recordkeeping and reporting requirements are established. [9VAC5-40-8320, page 15]
15. Registration requirements are specified. [9VAC5-40-8330, page 16]

16. Facility and control equipment maintenance or malfunction requirements are established. [9VAC5-40-8340, page 16]

17. Requirements for federal (Title V) operating permits are provided. [9VAC5-40-8350, page 16]

18. Sources are alerted to the potential necessity of obtaining permits. [9VAC5-40-8360, page 16]

19. Documents incorporated by reference are listed. [9VAC5-40-8370, page 17]

High Priority Violators (Hpv's) For The Second Quarter, 2012

NOV's Issued from January through March 2012: NONE

CO's Issued from January through March 2012

BRRO	<p>Celanese Acetate LLC</p> <p>Narrows, Virginia Registration No. 20304</p> <p>SIC 2823 Cellulosic Man-made Fibers NAICS 325221 Chemical Mfg.</p>	<p>Discovery dates: 9/9/2011</p> <p>Alleged violations:</p> <p>Failure to operate a standby monitoring system or conduct compliance tests to obtain required emissions data.</p>	<p>NOV - Issued 10/11/2011 CO - Issued 01/17/2012</p> <p>Civil Charge - \$13,122.20(Paid)</p>
NRO	<p>GenOn Mid-Atlantic LLC / GenOn Potomac River LLC (pka Mirant)</p> <p>Alexandria, Virginia</p> <p>Registration No. 70228</p> <p>SIC 4911 Electrical Services NAICS 221112 Utilities – Electric Power Generation, Transmission and Distribution</p>	<p>Discovery date: 07/12/2011</p> <p>Alleged violations:</p> <p>Failure to install water fogging system.</p> <p>Exceeded permitted NOx limit.</p> <p>Failure to maintain and operate in a manner consistent with air pollution control practices for minimizing emissions.</p>	<p>NOV - Issued 08/30/2011 CO - Issued 02/09/2012</p> <p>Civil Charge - \$280,704.00(Paid)</p> <p>Additional Information:</p> <p>Water fogging system has been installed.</p> <p>No further NOx exceedances.</p>
BRRO	<p>Chemical Lime Company (Lhoist North America)</p> <p>Ripplemead, Virginia Registration No. 20225</p> <p>SIC 3274 Lime NAICS 327410 Nonmetallic Mineral Product Plant</p>	<p>Discovery dates: 11/1/2011</p> <p>Alleged violations:</p> <p>Exceeded short term PM emissions limit for Kiln #1.</p>	<p>NOV - Issued 12/27/2011 CO - Issued 02/09/2012</p> <p>Civil Charge - \$27,720.00(Paid)</p>

BRRO	Yokohama Tire Company Salem, Virginia Registration No. 20123 SIC 3011 Tires and Inner Tubes NAICS 326211 Rubber Product Mfg.	Discovery dates: 11/14/2011 Alleged violations: Failed to include all emission estimates in a permit application. Modification without a permit	NOV - Issued 12/29/2011 CO - Issued 03/09/2012 Civil Charge - \$35,490.00(Paid) Late TV Fees - \$13,850.00(Paid)
SWRO	Reline America Inc. Saltville, Virginia Registration No. 11199 SIC 3089 Plastics Products NEC NAICS 326121 Plastics and Rubber Product Mfg.	Discovery dates: 8/4/2011 Alleged violations: Failed stack test for VOC and Styrene.	NOV - Issued 12/16/2011 CO - Issued 03/27/2012 Civil Charge - \$3,597.00(Paid) Additional Information: Conduct performance test for VOC and Styrene by 9/1/12.

CO's In Development – Previously Reported NOV's

PRO	Chaparral Virginia Inc. Petersburg, Virginia Registration No. 51264 SIC 3312 Blast Furnace/Steel Works NAICS 331111 Metal Mfg.	Discovery dates: 6/29/2011 Alleged violations: Failed to conduct performance tests for SO2, VOC, lead and mercury within required timeframe. Failed to submit required documentation for the 2011, 1st quarter excess emission report.	NOV - Issued 10/3/2011
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UPDATES FOR THE THIRD QUARTER, 2012

Actions occurring from April through May 4, 2012

<i>*The following actions have occurred post quarter and will be included in the next quarterly report.</i>		
DEQ Region	Facility	Status Update
PRO	Honeywell Resins and Chemicals LLC	NOV - Issued 04/17/2012 SAP excess emissions for PM, PM-10, PM-2.5, and sulfuric acid mist. Excess visible emissions from the molten sulfur storage tank.

EPA CD's In Development – Previously Reported NOV's

<i>**The inspections at the Hopewell facilities were conducted as part of EPA Region III's Hopewell Geographic</i>
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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.

<p>**EPA</p>	<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 – 11/07/2007</p> <p>Alleged violations: Violations of 40 CFR 63 Subpart VVV (Publically Owned Treatment Works - POTW) and Reasonably Available Control Technology (RACT) that include failure to provide appropriate notification, meet control requirements, conduct inspections and monitoring, properly calculate emission values.</p>	<p>EPA 1st NOV - Issued 07/06/2009 EPA 2nd NOV - Issued 12/17/2010</p> <p>Additional Information: NOV Meeting was held with EPA, DEQ, and the Responsible Party on 9/23/09 and 03/09/2011.</p>
<p>DEQ - PRO</p>		<p>Discovery dates: 02/04/2011</p> <p>Alleged violations: Failure to meet 92% HAP mass removal present in wastewater.</p>	<p>NOV - Issued 05/25/2011</p> <p>Additional Information: This NOV cites the same violations as the EPA NOV issued on 12/17/2010.</p>
<p>**EPA</p>	<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 – 04/18/2008</p> <p>Alleged violations: 1st NOV - 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. 2nd NOV – Further violations of 40 CFR 63 Subpart JJJ, and Subpart H, that include improper use of emission debits and credits; failure to provide certifications, reports and plans; and improper emission controls.</p>	<p>EPA 1st NOV - Issued 07/17/2009 EPA 2nd NOV - Issued 12/7/2010</p> <p>Additional Information: NOV Meetings have been held with EPA, DEQ, and the Responsible Party on 9/10/09 and 2/2/2011.</p>
<p>**EPA</p>	<p>Smurfit-Stone Container Corp. / Hopewell Mill</p> <p>Hopewell, Virginia</p> <p>Registration No. 50370</p> <p>SIC 2631 Pulp Mills</p>	<p>Discovery dates – 07/27/2010</p> <p>Alleged violations: Failure to operate in a manner to demonstrate compliance with HAP reduction requirements. Failure to submit periodic startup, shutdown and malfunction reports.</p>	<p>NOV - Issued 09/27/2010</p> <p>Additional Information: NOV Meeting was held with EPA, DEQ, and the Responsible Party on 01/31/2011.</p>

	NAICS 322130 Pulp, Paper, and Paperboard Products		
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**EPA CD's In Development – Previously Reported NOV's
Cont.**

***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	Honeywell International Inc. Hopewell, Virginia Hopewell City Registration No. 50232 SIC 2869, 2899, 2819 Industr. Organic Chemical NEC, Chemical & Chem. Prep, NEC, Industrial Inorganic Chemicals NAICS 325199 Chemical Mfg.	Discovery date – 11/06/2007 Alleged violations: 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) 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.	EPA 1st NOV - Issued 03/10/2009 EPA 2nd NOV - Issued 08/21/2009 Additional Information: NOV Meetings have been held with EPA, DEQ, and the Responsible Party on 5/27/09, 11/17/09, 03/25/10, 11/10/2010 and 1/26/2011.
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