

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING

WEDNESDAY, NOVEMBER 6, 2002
SHERATON HOTEL, I-62 & BROAD STREET
RICHMOND, VIRGINIA

Board Members Present: Gary Baise - Chairman
Karlynn W. Bucher - Vice-Chairman
Richard D. Langford

Board Members Absent: Vivian Thomson
Smita Siddhanti

Staff: Robert G. Burnley, Director
Department of Environmental Quality

Richard F. Weeks, Deputy Director
Department of Environmental Quality

Cindy M. Berndt
Department of Environmental Quality

Attorney General's Office: Carl Josephson

- 1) The following minutes summarize activities, which took place at this Board meeting.
- 2) The meeting was convened at 10:00 a.m. on Wednesday, November 6, 2002, recessed at 11:45 a.m. and reconvened at 1:00 p.m. (Ms. Bucher left at 11:45, but all actions requiring a vote were taken prior to that time.) The meeting was adjourned at 2:00 p.m.

MINUTE NO. 1 - Municipal Solid Waste Landfills (Article 43 of 9 VAC 5 Chapter 40, Revision B02) - Regulation Development Report and Request to Publish Proposal for Public Comment

Ms. Karen Sabasteanski, Office of Air Regulatory Development, Department of Environmental Quality presented Revision B02 to the Board. She explained that Section 111(d) of the Clean Air Act requires EPA to promulgate guidelines for states to use in developing regulations to control pollutants from existing municipal solid waste landfills. The primary components of emissions from municipal solid waste landfills are nonmethane organic compounds (including VOCs, hazardous air pollutants, and odorous compounds), and methane, both of which are capable of causing serious adverse health and welfare effects. The specific emissions guidelines for existing landfills (which commenced construction, reconstruction or modification before May 30, 1991) were promulgated in subpart Cc of Part 60 of the Code of Federal Regulations.

Ms. Sabasteanski advised that EPA had notified the state that Virginia's plan has a number of deficiencies and can not be approved without modification. Therefore, it is necessary to initiate a new regulatory action in order to amend the regulation in such a way as to address deficiencies identified by EPA.

Ms. Sabasteanski briefed the Board on the public participation activities to date and the details of the

proposed amendments.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion made by Ms. Bucher, authorized the Department to promulgate the proposal for public comment.

MINUTE NO. 2 - Visible Emissions and Fugitive Dust/Emissions (Rev. C00) - Public Participation Report and Request for Board Action

Ms. Karen Sabasteanski, Office of Air Regulatory Development, Department of Environmental Quality presented Revision C00 to the Board. She explained that the current regulations concerning visible emissions and fugitive dust/emissions (Rules 4-1 and 5-1) conflict with Virginia statutory law. Specifically, 9 VAC 5-40-90 2 and 9 VAC 5-50-90 2 allow oil to be applied to dirt roads, material stockpiles, and other surfaces which may create airborne dust. This violates § 62.1-44.34:18 of the Code of Virginia, which prohibits the discharge of oil upon land. Ms. Sabasteanski also explained that there were some minor editorial changes included in Revision C00.

In addition, Ms. Sabasteanski advised the Board that because the revisions are necessary to conform to Virginia statutory law, the revisions are exempt from all state public participation requirements of the Administrative Process Act. However, in order to meet federal requirements for public participation the Department issued a notice that provided for receiving comment during a comment period and at a public hearing. There were no hearing attendees, and no public testimony or comment was received.

Based on the Board book material, the staff presentation and Board discussion, the Board, on a motion made by Ms. Bucher, adopted the revisions with an effective date of February 1, 2003 and directed that the revisions be submitted to EPA as a State Implementation Plan Revision. The Board also affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided for by the Administrative Process Act.

MINUTE NO. 3 - Federal Documents Incorporated by Reference (9 VAC 5 Chapter 20, Rev. I02) - Request for Board Action

Ms. Karen G. Sabasteanski, Office of Air Regulatory Development, Department of Environmental Quality, presented Revision I02 to the Board. She explained that the purpose of the proposed action is to amend the regulations to incorporate newly promulgated federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and national emission standards for hazardous air pollutants for source categories (Maximum Achievable Control Technology, or MACT), Rules 5-5, 6-1, and Rule 6-2, respectively, of the agency's regulations and discussed the proposed revisions to the regulations. Ms. Sabasteanski advised the Board that because the state regulations are essentially the same as the federal, the state regulations are exempt from all state public participation requirements of the Administrative Process Act. In addition, she explained that because the regulations will not be submitted as a SIP revision, they are not subject to federal public participation requirements either.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion made by Mr. Langford, adopted Revision I02 with an effective date of February 1, 2003 and directed that the revisions be submitted to EPA in order to retain delegation of authority to enforce the EPA regulations. In addition, the Board affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided for by the Administrative Process Act.

MINUTE NO. 4 - Public Forum

There were no speakers during the public forum..

MINUTE NO. 5 - Minutes

Action on the minutes from the Board's meeting on September 30, 2002 was deferred. Based on a concern that one or more Board members did not vote on a particular agenda item, staff requested that the Board defer action until notes could be reviewed to determine that the minutes were correct.

MINUTE NO. 6 - Control Technology Requirements for Emissions of NO_x from Electric Generating Combined Cycle Turbines (AQP-14) - Request for Board Action

Mr. Robert A. Mann, Office of Air Regulatory Development, Department of Environmental Quality presented AQP-14 to the Board. He explained that the board maintains a body of policies known as Air Quality Program Policies and Procedures (AQPs). Virginia law permits agencies to adopt policies, interpretative rulings, and guidelines for their employees to use in applying the law so as to give effect to the intent and spirit of the law. Although these policies do not have the binding force of law because they are not promulgated as regulations, they are generally accorded persuasiveness by the courts so long as they represent an accurate interpretation of the relevant statute or other authorities from which they are derived and are not inconsistent with the law.

Mr. Mann advised the Board that an addition to the board's body of policies is now necessary. The purpose of the new policy is to establish the emission limits for NO_x from electric generating combined cycle turbines subject to the new source review program that reflect the use of best available control technology (BACT). The policy preserves the concept of case-by-case BACT and allows sources to justify and request a different BACT for their turbines.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion made by Mr. Langford, approved AQP14, with an effective date of December 1, 2002, and stated that the Board would entertain requests to review the policy if the public desires.

MINUTE NO. 7 - State Advisory Board on Air Pollution - Presentation of Reports

The Board received reports from the State Advisory Board on Air Pollution (SABAP) on the projects that the SABAP had been asked to study. The three reports were: BACT Clearinghouse; Methods of Quantifying VOCs for Air Permitting And Calculating Permit Fees and Deposition of Nitrogenous Pollutants in the Chesapeake Bay Watershed. On the BACT Clearinghouse, the SABAP's charge was to establish guidelines for updating the functionality of the BACT Clearinghouse such that the clearinghouse would, among other things, provide consistent information so that the clearinghouse is better understood and more user friendly. The SABAP reported to the Board that Virginia should establish a state BACT Clearinghouse. The second report concerned the evaluation of alternative methods for quantifying VOCs and recommended that Virginia adopt the Pennsylvania state guidance for quantifying VOCs. Finally, the SABAP looked at deposition of nitrogenous pollutants in the Chesapeake Bay. The SABAP reviewed current monitoring information as well as upcoming studies/models and contributing sources and states. The SABAP's recommended that Virginia assign staff to participate in ongoing and upcoming studies/modeling, track progress of multi entity programs and encourage reassessing effects of reductions in atmospheric deposition as control programs are put in effect.

After much discussion of the reports, the Board thanked the SABAP for their reports and the dedication and hard work the reports represented. The Department also expressed their appreciation for the work of the SABAP. In addition, staff advised the Board that each report will be reviewed in detail and reports made to the Board at future meetings on the status of our review and implementation.

MINUTE NO. 8 - Future Meetings

The Board confirmed February 28, 2003 as the date of their next meeting.

Cindy M. Berndt