

**MINUTES  
STATE AIR POLLUTION CONTROL BOARD MEETING  
WEDNESDAY, OCTOBER 10, 2007**

**GENERAL ASSEMBLY BUILDING  
HOUSE ROOM C  
9<sup>TH</sup> & BROAD STREETS  
RICHMOND, VIRGINIA**

**Board Members Present:**

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

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

**Department of Environmental Quality:**

David K. Paylor, Director  
Cindy M. Berndt

Rick Weeks, Chief Deputy

**Attorney General's Office:**

Carl Josephson  
Senior Assistant Attorney General

The meeting was convened at 9:45 a.m., recessed at 12:05 p.m., reconvened at 1:05, recessed at 3:05 p.m., reconvened at 3:08 p.m. and adjourned at 3:20 p.m.

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**Minute No. 1 – Presentation by Department of Forestry.** The Board received a report from Mr. Kline with the Department of Forestry on efforts to establish ecosystems services markets. He briefed the Board on their efforts and how they plan to move forward on developing the markets.

**Minute No. 2 - CAIR SO<sub>2</sub> Budget (Part IV of 9 VAC 5 Chapter 140, Rev. E07).** Ms. Mary E. Major from the Air Division presented amendments to the CAIR SO<sub>2</sub> budget regulations. Ms. Major explained that Chapter 867 of the 2006 Acts of the Assembly established the first phase CAIR SO<sub>2</sub> Annual trading budget (63,478 tons) and the start date (2010) for the budget. However, 9 VAC 5-140-3400 of Article 5 (CAIR SO<sub>2</sub> Allowance Allocations) of the SO<sub>2</sub> Annual Trading Program (Part IV of 9 VAC 5 Chapter 140) is not consistent with Code of Virginia in that the start date for the first phase CAIR SO<sub>2</sub> Annual trading budget is 2009. Various other provisions of the regulation and supporting documents accompanying the adoption of the regulation indicate that the start date should be 2010 not 2009; thus, the start date of 2009 specified in the regulation for the CAIR SO<sub>2</sub> budget is a technical error.

Ms. Major advised the Board that as a result of the above, 9 VAC 5-140-3400 needs to be amended to change the start date for the first phase CAIR SO<sub>2</sub> Annual trading budget from 2009 to 2010.

The Board, based on the Board book material, the staff presentation and Board discussion, on a motion by Ms. Thomson, unanimously adopted the proposal, with an effective date according to the provisions of the Administrative Process Act, and affirmed

that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision in accordance with the Administrative Process Act.

**Minute No. 3 - Opacity Source Surveillance Methods (9 VAC 5 Chapters 40 and 50, Rev. F07).**

Ms. Mary E. Major presented amendments to the regulations for the control and abatement of air pollution concerning opacity source surveillance methods. Ms. Major explained that Chapter 148 of the 2007 Acts of the Assembly added § 10.1-1307.3 B to the Code of Virginia, providing authority for the Director or his authorized representative to pursue enforcement action for a violation of opacity requirements or limits based on (i) visual observations conducted according to EPA methods, (ii) information from certified continuous opacity monitors, or (iii) other methods approved by EPA. Ms. Major requested Board approval of the amendments as the amendments are necessary to conform to Virginia statutory law.

The Board, based on the Board book material, staff presentation and Board discussion, on a motion by Mr. Hanson, unanimously adopted the proposal, with an effective date according to the provisions of the Administrative Process Act, and affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision in accordance with the Administrative Process Act.

**Minute No. 4 - Control of Motor Vehicle Emissions in the Northern Virginia Area (9 VAC 5 Chapter 91, Rev. ML).**

Ms. Mary E. Major presented amendments to the regulations for the control of motor vehicle emissions in Northern Virginia. Ms. Major explained that Chapter 325 of the 2007 Acts of the Assembly added Section 46.2-602.1 that specifically pertains to replica vehicles and requires that any vehicle registered as a replica vehicle “shall be subject to vehicle safety inspections as provided for in Article 21 (§ 46.2-1157 et seq.) of Chapter 10 and emissions inspections as provided for in Article 22 (§ 46.2-1176 et seq.) of Chapter 10.” She explained that the new language also requires that the replica vehicles meet safety and emissions requirements as established for the model year of which the vehicle is a replica. Specially constructed and reconstructed vehicles are not required to meet the emissions standards, however, they are required to be branded as a “specially constructed”, “reconstructed” or “replica” as appropriate at the time of titling and registration (§ 46.2-625).

Ms. Major advised the Board that the regulation needed to be amended to incorporate the requirements of Chapter 325 of the Acts of the Assembly.

The Board, based on the Board book material, staff presentation and Board discussion, the Board, upon motion by Ms. Thomson, unanimously adopted the proposal, with an effective date according to the provisions of the Administrative Process Act, and affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision in accordance with the Administrative Process Act.

**Minute No. 5 - CAIR Nonattainment Area Requirements (9 VAC 5 Chapter 140, Rev. E05).**

Mr. Robert A. Mann and Ms. Mary E. Major presented amendments to the CAIR emission trading program. Mr. Mann briefed the Board on the history of the regulation and reviewed the public comments and response document for the Board. Ms. Major briefed the Board on the amendments being recommended to the provisions as a result of comments received that highlighted unintended consequences of the nonattainment area requirements of the final regulations as previously adopted by the Board. She explained that the following amendments were necessary to ensure that all sources, including new

sources and any sources that may be operating in any future nonattainment areas, are treated in an equitable manner:

- NO<sub>x</sub> Annual Trading Program and NO<sub>x</sub> Ozone Season Trading Program – Exempt new units until January 1, 2014.
- NO<sub>x</sub> Annual Trading Program and NO<sub>x</sub> Ozone Season Trading Program – Exempt units until such time as the unit establishes a 5-year operational period.
- For the SO<sub>2</sub> Annual Trading Program exempt units not eligible for allowances under the Acid Rain Program.

After questions, the Board heard from Mr. Jeff Holmstead on behalf of Mirant, Caleb Jaffe with Southern Environmental Law Center and William Skrabak on behalf of the City of Alexandria.

The Board, based on the Board book material, staff presentation and Board discussion, on a motion by Mr. Buckheit, unanimously adopted the proposal, with an effective date according to the provisions of the Administrative Process Act.

**Minute No. 6 – Public Forum.** Ms. Catharine Gilliam appeared on behalf of the National Parks Conservation Association to advise the Board of the recently-completed analysis by the National Park Service demonstrating that pollutants from the proposed Dominion Wise County power plant would have adverse impacts on air quality related values at Great Smoky Mountains National Park in North Carolina and Tennessee. Ms. Gilliam briefed the Board on the key findings of the National Park Service.

**Minute No. 7 - Federal Documents Incorporated by Reference (Rev. C07).** Ms. Karen Sabasteanski presented amendments to the regulations for the control and abatement of air pollution 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 board's regulations. Ms. Sabasteanski explained that the amendments included:

- Updating the date of the Code of Federal Regulations book being incorporated by reference,
- Incorporating 2 NSPSs: Subpart KKKK, Standards of Performance for Stationary Combustion Turbines (40 CFR 60.4300-4420) and Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (40 CFR 60.4200-4219).
- Incorporating 4 MACTs: Subpart DDDDDD, Polyvinyl Chloride and Copolymers Production Area Sources (40 CFR 63.11140-11145); Subpart EEEEEEE, Primary Copper Smelting Area Sources (40 CFR 63.11146-11152); Subpart FFFFFFFF, Secondary Copper Smelting Area Sources (40 CFR 63.11153-1119); and Subpart GGGGGG, Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium (40 CFR 63.11160 - 11168)
- Adding 9 VAC 5-60-92 (Federal Hazardous Air Pollutant Program) in order to formally incorporate by reference the U.S. EPA Hazardous Air Pollutant Program as promulgated in § 112 of the federal Clean Air Act to the extent that the provisions of 40 CFR Part 63 are incorporated by reference.

Based on the Board book material, staff presentation and Board discussion, the Board on a motion by Mr. Buckheit, unanimously adopted the proposal, with an effective date

according to the provisions of the Administrative Process Act, with the following exceptions:

- that Subpart III, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines (40 CFR 60.4200-4219) be removed and “reserved” placed in its stead; and
- that any standards vacated by the court be removed and “reserved” placed in their stead. In addition, the Board unanimously affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision in accordance with the Administrative Process Act.

**Minute No. 8 - 8-hour Ozone Maintenance Areas (Rev. 107) - Request for Board**

**Action:** Ms. Karen Sabasteanski presented amendments to the regulations for the control and abatement of air pollution concerning 8-hour ozone maintenance areas. She explained that EPA had approved a list of areas that had been nonattainment for the 8-hour ozone standard as attainment and that the state implementation plan (SIP) needed to be revised in order to meet the federal requirements for 8-hour ozone attainment areas. Ms. Sabasteanski detailed the following amendments to the regulations:

- The Hampton Roads Ozone Maintenance Area has been revised to include the counties of Gloucester and Isle of Wight; the Richmond Ozone Maintenance Area has been revised to include Petersburg City and Prince George County. [9 VAC 5-20-203]  
The delineation of a certain portion of Charles City County in the Richmond area has been removed. [9 VAC 5-20-203]  
The Hampton Roads 8-hour Ozone Nonattainment Area (counties of Gloucester, Isle of Wight, James City, and York; cities of Chesapeake, Hampton, Newport News, Portsmouth, Poquoson, Norfolk, Suffolk, Virginia Beach, and Williamsburg) and the Richmond 8-hour Ozone Nonattainment Area (counties of Charles City, Chesterfield, Hanover, Henrico, and Prince George; cities of Colonial Heights, Hopewell, Petersburg, and Richmond) have been deleted. [9 VAC 5-20-204 A 2]

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Hanson, unanimously adopted the proposal, with an effective date according to the provisions of the Administrative Process Act, and affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision in accordance with the Administrative Process Act.

**Minute No. 9 - Mirant – Potomac River Generating System Draft Comprehensive State Operating Permits.**

Mr. David K. Paylor introduced the agenda item and explained to the Board that the presentation would focus on the draft 5-stack permit, but that a draft 2-stack permit was included for the Board’s information. Mr. James E. Sydnor presented the draft comprehensive State Operating Permit (SOP) for the Potomac River Generating System.

The Board, based on the Board book material, staff presentation and Board questions and discussions, on a motion by Mr. Langford, (1) authorized the Department to public notice the draft 5 stack permit presented to the Board and (2) ask the Department to include a request for comment from the public on the following:

- Should Continuous Emission Monitoring Systems be required for all Particulate Matter regulated by the Regulations for the Control and Abatement of Air Pollution and (1)

does the Environmental Protection Agency (EPA) have an approved methodology for these systems, and (2) has the EPA certified an instack instrument for this purpose?

- Should the operating performance of the control equipment for sulfur dioxide (SO<sub>2</sub>) be the basis for permit limitations rather than the array of operating scenarios?
- Are the varying SO<sub>2</sub> control rates considered intermittent controls?
- Should permit emission rates for SO<sub>2</sub> be established to ensure the use of Trona (or other sorbent materials), and should the proposed minimum sulfur content requirement be eliminated?
- Should the Clean Air Interstate Rule and Clean Air Mercury Rule requirements be included in the permit?
- What changes should be made to the architecture of the permit and the emission limits in the proposed permit?
- What changes or additions should be made to the proposed parametric monitoring and (1) does such monitoring obviate the need for Particulate Matter Continuous Emissions Monitoring Systems and (2) what is the commercial availability of these instruments?

**Minute No. 10 – Virginia City Hybrid Energy Center**

In response to the presentation by Ms. Catharine Gilliam during the public forum, Ms. Thomson requested a briefing at the next Board meeting on the proposal by Dominion Virginia Power to construct the Virginia City Hybrid Energy Center.

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**Cindy M. Berndt**