

**TENTATIVE AGENDA AND MINI BOOK
STATE AIR POLLUTION CONTROL BOARD MEETING
FRIDAY, SEPTEMBER 12, 2003**

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

Convene - 9:30 A.M.

I.	High Priority Violators	Dowd	A
II.	Regulations		
	Major New Source Review Reform (Rev. E03)	Mann	B
	Minor New Source Review Reform (Rev. F03)	Mann	C
	Municipal Solid Waste Landfills (Rev. B02)	Sabasteanski	D
	Remote Sensing (Rev. MK)	Major	E
III.	Public Forum		
IV.	Other Business		
	Permitting Status of Recent Electric Generating Units	Turner	F
	Report on Air Quality Program Activities	Daniel	G
	Future Meetings - November 5, 2003	Daniel	
	Minutes (April 7, 2003)	Berndt	H

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.

Report on High Prior Violators for the First and Second Quarters

A report on High Priority Violators for the first and second quarters will be given.

**Major New Source Review Reform (Articles 8 and 9 of 9 VAC 5 Chapter 80, Rev. E03) -
Public Participation Report and Request for Board Action**

By letter of February 3, 2003, the department received a petition from the Virginia Manufacturers Association to initiate a rulemaking concerning the new source review permit program for major stationary sources and major modifications locating in prevention of significant deterioration (PSD) areas and nonattainment (NA) areas, Articles 8 and 9 of 9 VAC 5 Chapter 80.

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

The petitioner is requesting the board to initiate an expedited rulemaking pursuant to § 2.2-4006 A 4 c of the Code of Virginia to incorporate recent federal new source review reforms into Virginia's

major new source review regulations.

The request to incorporate recent federal new source review reforms into Virginia's major new source review regulations should be granted for the following reasons:

- Use of the NSR reform regulations will result in an overall net benefit to air quality.
- Use of the NSR reform regulations will address long-recognized problems with the current regulations.
- Use of the NSR reform regulations will contribute to overall efficiency of permit preparation, review and processing, and thus contribute to resource savings for the state and the regulated community.
- Use of the NSR reform regulations will redirect focus from a wide range of relatively insignificant projects to ones with the potential for significant environmental impact.
- Use of the NSR reform regulations will provide tangible rewards for environmental stewardship by encouraging sources to voluntarily reduce emissions.

The request to use the expedited rulemaking process pursuant to § 2.2-4006 A 4 c of the Code of Virginia to accomplish the above should be denied for the following reasons:

- The full APA regulatory process is preferable because it provides opportunity for broad-based public participation and government oversight.
- Exemptions from the full process should be narrowly construed so as not to foreclose that opportunity and to permit the nature and the quality of the regulation to benefit from the full process, including conflict resolution.
- The expedited process has hitherto only been used for non-controversial regulatory amendments. To approve a potentially controversial regulatory change under the expedited process has never been done, and doing so would violate the intent of the APA.
- The expedited process should not be applied to a matter where federal requirements may be met in ways other than merely adopting the specified federal provisions, especially in a situation where the mere adoption of the specified federal provisions, at the behest of particular interested stakeholders, may be unacceptable to other stakeholders.
- The EPA regulations are in litigation at the federal level and may change. Use of the expedited process is inadvisable in consideration of this ongoing litigation. EPA has already responded to the court that it intends to seek public comment and reconsider at least one issue associated with its new regulations.
- Use of the expedited process is not necessary to meet the EPA SIP submittal deadline.
- Due to the complexity of the EPA regulations, use of an expedited process would not afford the DEQ staff adequate time to gain a thorough understanding of the EPA regulations prior to implementing them.

Minor New Source Review Reform (Article 6 of 9 VAC 5 Chapter 80, Rev. F03) - Public Participation Report and Request for Board Action

By letter of February 3, 2003, the department received a petition from the Virginia Manufacturers Association to initiate a rulemaking concerning the minor new source review permit program, Article 6 of 9 VAC 5 Chapter 80. To solicit comment from the public on the petition, the Department issued a notice that provided for receiving written comment during a comment period.

The petitioner is requesting the board to undertake and swiftly conclude a rulemaking to incorporate recent federal new source review reforms and other innovations previously proposed by the board

into Virginia's minor new source review regulations.

The request to incorporate recent federal new source review reforms and other innovations previously proposed by the Board into Virginia's minor new source review regulations should be denied for the following reasons:

- EPA has stated that it will not accept the application of the major new source review (NSR) elements to a minor new source review program.
- In the Federal Register preambles that serve to justify its major NSR regulations, EPA includes several statements that indicate that minor NSR is to serve as a backup to review projects that may not be subject to major NSR.
- The minor NSR program has just been extensively revised, a process that began in 1994. Currently, staff are working to develop an implementation strategy and guidance. Halting this process would undo years of intensive collaborative work, as well as create confusion among staff, the regulated community, and the public.
- Experience is needed implementing the latest revision to the minor NSR program in order to make meaningful changes.
- Experience is needed understanding and implementing the EPA major NSR reform regulations prior to including the elements thereof in a minor NSR program.

Municipal Solid Waste Landfills (9 VAC 5 Chapter 40, Rev. B02) - Public Participation Report and Request for Board Action

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.

On January 7, 1999, the State Air Pollution Control Board approved a final regulation implementing the Part 60 requirements, which was then submitted to EPA on August 11, 2000 as part of the state's § 111(d) plan. EPA notified the state on February 7, 2001 that the plan is not approvable due to a number of deficiencies associated with the regulation. Therefore, it is necessary to amend the regulation in such a way as to address deficiencies identified by EPA.

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.

To solicit comment from the public on the proposed regulation amendments, the Department issued a notice that provided for receiving comment during a comment period and at a public hearing.

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

1. General cross-references to "design applicability criteria" and "emission rate applicability criteria" have been replaced with specific criteria throughout the regulation. [9 VAC 5-40-5810 C (definition of "design capacity"), 9 VAC 5-40-5820 B, 9 VAC 5-40-5820 B 2, 9 VAC 5-40-5820 C, 9 VAC 5-40-5820 C 1, 9 VAC 5-40-5820 C 1 b, 9 VAC 5-40-5820 C 1 b (1), 9 VAC 5-40-5820 C 2, 9 VAC 5-40-5820 C 2 b, 9 VAC 5-40-5820 C 2 e (3), 9 VAC 5-40-5855 A, 9 VAC 5-40-5855 B, 9 VAC 5-40-5855 C, 9 VAC 5-40-5855 D, 9 VAC 5-40-5860 B 2, 9 VAC 5-40-5860 B 2 a, 9 VAC 5-40-5860 B 2 b, 9 VAC 5-40-5860 B 3 b, 9 VAC 5-40-5860 B 3 c, 9 VAC 5-40-5860 B 4, 9 VAC 5-40-5860 B 4 a, 9 VAC 5-40-5860 B 4 b, 9 VAC 5-40-5880 C 3, 9 VAC 5-40-5880 D 1 b, 9 VAC 5-40-5880 E, 9 VAC 5-40-5880 E 1, 9 VAC 5-40-5880 E 2, 9 VAC 5-40-5880 G 1 c, 9 VAC 5-40-5890 H]
2. Specific design capacity criteria have been revised for consistency with 40 CFR Part 60. [9 VAC 5-40-5820 A 1 and 2, 9 VAC 5-40-5920 D]
3. Minor revisions for clarity promulgated by EPA on February 24, 1999 have been made. [9 VAC 5-40-5810 C (definition of "modification"), 9 VAC 5-40-5820 B 1, 9 VAC 5-40-5820 C, 9 VAC 5-40-5820 C 1 b (1), 9 VAC 5-40-5824 A 3 b]
4. Minor revisions for clarity promulgated by EPA on April 10, 2000 have been made. [9 VAC 5-40-5860 B 1 b, 9 VAC 5-40-5870 C, 9 VAC 5-40-5870 D 1, 9 VAC 5-40-5880 E, 9 VAC 5-40-5890 D 2]
5. Minor revisions for clarity have been made to address additional issues identified by EPA. [9 VAC 5-40-5810 C (definitions of "closed landfill," "design capacity," "federal operating permit" "household waste," "industrial solid waste," and "landfill"), 9 VAC 5-40-5820 B, 9 VAC 5-40-5820 D, 9 VAC 5-40-5850 G, 9 VAC 5-40-5850 H, 9 VAC 5-40-5855 A, 9 VAC 5-40-5860 A, 9 VAC 5-40-5880 C 2 a, 9 VAC 5-40-5880 C 2 b, 9 VAC 5-40-5880 F, 9 VAC 5-40-5890 D 4]
6. Minor corrections have been made. [9 VAC 5-40-5800 D 1, 9 VAC 5-40-5810 A, 9 VAC 5-40-5810 C (definitions of "CERCLA," "gas management system," "NMOC," and "offsite gas migration"), 9 VAC 5-40-5820 C 2 a (4), 9 VAC 5-40-5820 C 2 c (2) (b), 9 VAC 5-40-5822, 9 VAC 5-40-5850 C 3, 9 VAC 5-40-5850 C 5, 9 VAC 5-40-5850 E, 9 VAC 5-40-5850 E 4, 9 VAC 5-40-5870 F, 9 VAC 5-40-5880 H 5, 9 VAC 5-40-5890 E 1 b, 9 VAC 5-40-5910, 9 VAC 5-40-5920 B]

Below is a brief summary of the substantive changes the Department is recommending be made to the original proposal.

1. The requirement to obtain a federal operating permit has been revised to reference 9 VAC 5-80-80 C of the primary operating permit regulation rather than a generic date tied to plan approval or a specific date that is no longer relevant. [9 VAC 5-40-5800 C]
2. The definition of "industrial solid waste" has been revised to better delineate the relationship among the federal law and regulations, and state regulations. [9 VAC 5-5810 C]
3. The definition of "municipal solid waste landfill" has been revised to reference RCRA regulations in addition to the Virginia regulations, and to better delineate the relationship among the federal law and regulations, and state regulations. [9 VAC 5-5810 C]

Remote Sensing (9 VAC 5 Chapter 91, Rev. MK) - Request for Board Action on Emergency Regulation

The current regulation governing the motor vehicle emissions testing (I/M) program meets the applicable federal requirements for on-road testing but does not meet the state code requirements. In order to meet the requirements of the state code, the regulation needs to be amended to include a definitive requirement for random testing of motor vehicle emissions, procedures to notify owners of test results, and assessment of civil charges for noncompliance with emissions standards in the current regulation. The regulation also needs to be amended to establish standards and criteria. Additional background information may be found below following this paragraph.

Section F 1 of Item 383 of Chapter 1042, 2003 Acts of Assembly, in part, provides the following: "The Department of Environmental Quality shall initiate, beginning January 1, 2004, a program for on-road testing of motor vehicles pursuant to § 46.2-1178.1, of the Code of Virginia, in all areas designated nonattainment for the 1-hour ozone air quality standard as of January 1, 2003. ...The State Air Pollution Control Board may promulgate any regulations necessary to implement these provisions. Such regulations shall be adopted as final prior to the January 1, 2004, implementation." The legislation was effective July 1, 2003, less than 280 days prior to the due date for the regulations, January 1, 2004.

The current program requires that affected vehicles be presented to emissions inspection stations biennially to receive an emissions inspection. This is accomplished through a network of service stations, repair garages, and other similar facilities that perform the inspections. Vehicles which fail the test are denied motor vehicle registration until inspection has been accomplished. Retests, after failure and repair, are free if accomplished within 14 days of the test and performed by the emissions inspection station which performed the initial test. If a motorist wishes to request a waiver of the test, an expenditure of at least \$450 on emissions-related repairs is required. The cost amount is adjusted each January by applying the Consumer Price Index released the previous fall by the federal government.

The geographic coverage of the program consists of the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Cars and trucks weighing up to 10,000 pounds and are 25 years old and newer are subject to an exhaust emissions inspection using ASM equipment which tests cars under "loaded" conditions using a dynamometer. On- Board Diagnostics Systems (OBD) on vehicles so equipped will also be inspected. In addition, random testing of vehicles is accomplished using either roadside pullovers or a remote sensing device next to the roadway. Failing vehicles are required to report to an inspection for an out-of-cycle test.

The proposed amendments make a number of revisions to the remote sensing provisions of the regulation. These changes include: changes in some definitions, changes in some elements of the remote sensing testing applicability and program procedures and protocol as it pertains to gross polluters and clean car screening, changes to the remote sensing test standards, and changes in some enforcement and compliance procedures.

The aspect of on-road testing, i.e. remote sensing, is needed as an addition to the existing enhanced emissions inspection program for several reasons.

- Remote sensing is a requirement of the Federal Clean Air Act amendments of 1990. The act requires that at least 0.5% of the vehicles receive "on-road" testing. Use of Remote Sensing Device (RSD) is the most cost effective way to achieve this.
- The State Implementation Plan (SIP) for Northern Virginia already assumes that remote sensing will be used to identify high polluting vehicles and to require their verification, testing and, if needed, repair out-of-cycle (in addition to the existing 2-year testing

requirement). The Department of Environmental Quality is committed to fulfilling this SIP requirement.

- Remote sensing is an effective means of identifying vehicles that are subject to the enhanced emissions inspection program by virtue of being "primarily operated in" (but registered outside) the I/M area per the current I/M rule. Some of these vehicles may be improperly registered outside their actual residence in violation of Virginia law.
- Remote sensing is an effective means of identifying vehicles that are eligible for "clean screening" or exemption from their next schedule regular I/M test. Under certain limited conditions, this would relieve very clean vehicles from having to be tested at the next inspection cycle.

A remote sensing pilot study conducted in 2002 found that approximately twenty-eight percent of the vehicles observed in the I/M area were registered outside the I/M area, including nine percent from other Virginia jurisdictions. Emissions from these vehicles contribute to the air quality nonattainment status. High emitter vehicles from Virginia identified by remote sensing will be subject to verification testing and repairs if needed. Information on high emitter vehicles from other states will be shared with appropriate I/M administrators through agreements currently authorized by Virginia statute.

The study data were analyzed to determine exactly how many high emitter vehicles would be expected and how much air quality benefit would be obtained from RSD. This data has been considered in setting the standards and conditions.

The emergency regulation will be enforced under applicable statutes and will remain in full force and effect for one full year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Administrative Process Act.

Below is a brief summary of the proposal that is being recommended by the Department for emergency regulatory action.

1. Modify definition of "Affected Motor vehicle" to reflect statutory provisions of § 46.2-1179 B (9 VAC-5-91-20).
2. Add definition of "Confirmation test" to establish the difference between an emission test for vehicle registration compliance and an emissions inspection required due to a violation of the remote sensing exhaust emissions standards (9 VAC-5-91-20).
3. Add definition of "High emitter index" to provide a means of categorizing the probable failure-rates of engine families to accommodate the enforcement for vehicles that exceed the remote sensing standards. (9 VAC-5-91-20)
4. Add definition of "Vehicle specific power" or "VSP" to provide an indicator to estimate vehicle conditions at the time of a remote sensing device measurement (9 VAC-5-91-20).
5. Modify exhaust emission standards for two-speed idle (TSI) emissions test (9 VAC-5-91-160).
6. Modify exhaust emission standards for remote sensing emissions test to include NOx (9 VAC-5-91-180 A).
7. Repeal the phrase "at least twice within 90 days" because the new standards are more

stringent (9 VAC-5-91-180 B).

8. Add provisions to address the legislative mandate to implement the new standards in Table III B by January 1, 2004 (9 VAC-5-91-180 C, D and E).
9. Add provision that provides for the adjustment of the remote sensing standards (9 VAC 5-91-180 F).
10. Add provisions for clean screening of vehicles to begin by a specific date (9 VAC 5-91-180 G).
11. Eliminate provisions because the protocol and procedures for determining compliance with remote sensing standards have been changed (9 VAC 5-91-180 E).
12. Eliminate provisions because the protocol and procedures for determining compliance with remote sensing standards have been changed (9 VAC 5-91-180 F)
13. Eliminate the phrase "at least twice within 90 days" because the new standards are more stringent (9 VAC 5-91-750 B).
14. Modify regulatory language to provide clarity (9 VAC 5-91-750 B 2, C and D).
15. Add provision to requires certain vehicles to obtain both an exhaust test (ASM or two-speed idle) in addition to the OBD system test (9 VAC 5-91-759 E).
16. Modify provisions to simplify calculation of civil charge (9 VAC 5-91-760 A, B, C, D, E and F).
17. Add provisions to require vehicles that are 200% over the standard to pay the current waiver rate (9 VAC 5-91-760 G).
18. Modify regulatory language to provide clarity (9 VAC 5-91-760 H).

Permitting Status of Recent Electric Generation Unit Projects - Informational Briefing

The Department will brief the Board on the permitting of proposed Electrical Generating Facilities within the Commonwealth. Since 1999 the Department of Environmental Quality has seen a significant increase in the number of applications submitted by electrical generating facilities. This increase in permitting activity is part of a larger national trend towards construction of additional electrical generating capacity. The permitting activity peaked at around 28 known projects at various stages of the permitting process. This number has since been reduced due to the general economic downturn to the point where we now have 17 projects in various stages of the permitting process. This general increase in permitting activity has lead to an overall improvement in the pollution control technologies applied to electrical generating facilities.

Division Director's Report

A report on Division activities will be provided.