

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING

WEDNESDAY, NOVEMBER 5, 2003

COLLEGE CENTER
JAMES MADISON UNIVERSITY
HARRISONBURG, VIRGINIA

Board Members Present: Gary Baise - Chairman
Karlynn W. Bucher - Vice-Chairman
Vivian Thomson
Smita Siddhanti

Board Members Absent: Richard D. Langford

Department of Environmental Quality
Staff: Robert G. Burnley, Director
Richard F. Weeks, Deputy Director
Cindy M. Berndt
John M. Daniel, Jr.
Robert A. Mann
Mary E. Major
Karen Sabasteanski
Michael Dowd

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 1:07 p.m. on Wednesday, November 5, 2003, recessed at 3:35 p.m. and reconvened at 3:45 p.m. The meeting was adjourned at 6:10 p.m.

Minute No. 1 - High Priority Violators (HPVS) Report

The Board received a report, as contained in the briefing material, from Mr. Michael Dowd on high priority violators for the first and second quarters of 2003.

Minute No. 2 - VOC Emission Standards (9 VAC 5 Chapter 40, Rev. C02)

Mr. Robert A. Mann advised the Board that the Metropolitan Washington Air Quality Committee (MWAQC) had recommended that Maryland, Virginia, and Washington, DC, adopt regulations for portable fuel container spillage control, solvent cleaning, mobile equipment repair and refinishing, and architectural and industrial maintenance coatings in order to achieve the necessary reductions of VOC emissions in the Northern Virginia area. Mr. Mann explained that the regulation action would add the following new sections: Portable Fuel Container Spillage Control (Rule 4-42); Solvent Cleaning (Rule

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4-47); Mobile Equipment Repair and Refinishing (Rule 4-48); and Architectural and Industrial Maintenance Coatings (Rule 4-49).

In addition to the Board book material and staff presentation, the Board heard from a representative of Sherwin-Williams regarding the architectural and industrial maintenance coatings rule. Upon motion from Ms. Siddhanti, the Board unanimously approved the staff recommendation that the Board adopt the amendments, with an effective date as provided in the Administrative Process Act, and that the amendments be submitted to EPA as a State Implementation Plan revision.

Minute No. 3 - Definition of "initial performance test" (Rev. K03)

Mr. Robert A. Mann advised the Board that the definition of "initial performance test", added by a previous action of the Board contained an error. In addition, Mr. Mann explained that other changes have been made to improve the clarity of the definition without altering the substance of its meaning. Based on the Board book material and staff presentation, the Board, upon a motion by Ms. Bucher, unanimously approved the staff recommendations that the Board adopt the amendments, with an effective date of January 1, 2004, affirm that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision and directed that the amendments be submitted to EPA as a state implementation plan revision and/or to be part of the designated pollutant plan.

Minute No. 4 - Hampton Roads VOC Emissions Control Area (9 VAC 5 Chapter 20, Rev. G02)

Ms. Karen Sabasteanski advised the Board that the emission standards for VOCs in 9 VAC 5-40 apply to existing sources conducting activities such as asphalt application, solvent metal cleaning, metal can coating, and graphic arts operations. Since the initial establishment of the volatile organic compounds emissions control areas in 1979, James City County, York County, Poquoson City, and Williamsburg City have been exempt as they were deemed to rural to make a significant contribution to air pollution in the area. Two decades later, however, they have undergone significant development and are no longer rural. She explained that in light of the Hampton Roads area's violation of the 1-hour ozone standard, the exemption of these jurisdictions from the VOC emission standards must be now rescinded. The Board, based on the briefing material and staff presentation, on a motion made by Ms. Bucher, unanimously approved the staff recommendation that the Board adopt the amendments with an effective date as provided in the Administrative Process Act and the amendments be submitted to EPA as a State Implementation Plan revision.

Minute No. 5 - Early Reduction Credit (9 VAC 5 Chapters 20 and 40, Rev. C03)

Ms. Karen Sabasteanski advised the Board that EPA has implemented a policy whereby areas that currently meet the 1-hour ozone standard but do not meet the new 8-hour ozone standard may reduce their emissions and thus avoid designation as nonattainment. She explained that to afford these areas the opportunity to participate in the program, the applicability of VOC and NO_x control standards is being expanded to include these areas. Additionally, a number of areas that will be subject to the new nonattainment area requirements have been included in order for them to be able to implement controls for their nonattainment plans.

Initially, the staff recommendations were not approved for failure to get a second on a motion to adopt. A second motion made by Ms. Bucher failed on a two to two vote. (Mr. Baise and Ms. Bucher voted aye. Ms. Thomson and Ms. Siddhanti voted no.)

The staff returned to the Board with a revised draft final for their consideration. The revised final removed those localities that have the potential to become nonattainment areas under the 8-hour ozone standard, but are not participating in an early reduction compact, from 9 VAC 5-20-206 and placed them in 9 VAC 5-20-500. The remainder of the draft final was unchanged. The Board, on a motion made by Ms. Siddhanti, unanimously (1) adopted the revised final except for 9 VAC 5-20-500 with an effective date as provided in the Administrative Process Act and directed that the revised final be submitted to EPA as a State Implementation Plan revision, and (2) deferred action on 9 VAC 5-20-500 to a future meeting.

Minute No. 6 - NOx Budget Trading Program-Flow Control (9 VAC 5 Chapter 140, Rev. H02)

Ms. Mary E. Major advised the Board that the regulation establishes general provisions addressing applicability, permitting, allowance allocation, excess emissions, monitoring, and opt-in provisions to create a Virginia NOx Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides in order to protect public health and welfare. Provisions in the current NOx Budget Trading Program mandate that flow control begin in 2006. Ms. Major explained that EPA has made a preliminary finding that the year for starting flow control does not meet federal requirements and must be changed to 2005 or Virginia may face federal disapproval of its NOx SIP Call regulation. The Board, based on the briefing material and staff presentation, on a motion made by Ms. Thomson, unanimously adopted the staff recommendation that the Board adopt the amendment, with an effective date as provided in the Administrative Process Act and that the amendment be submitted to EPA as a State Implementation Plan revision.

Minute No. 7 - Emissions Trading, Virginia NOx Budget Trading Program (9 VAC 5 Chapter 140, Rev. F02)

Ms. Mary E. Major advised the Board that the regulation establishes a NOx Budget Trading Program as a means of mitigating the interstate transport of ozone and nitrogen oxides. The regulation includes provisions which establish a new source set-aside budget in the amount of 1,855 tons each year for first five years (2004-2008); 1,342 tons each year thereafter. She explained that the Appropriations Act includes a provision to enable the auctioning of NOx emission credits. Subsection D of Item 383 of Chapter 1042 of the 2003 Acts of Assembly indicates that the Department of Environmental Quality may auction the NOx emissions credits allocated under the NOx SIP Call as set-asides for new sources. Under the current regulation, distribution of set-aside is limited to newly permitted Virginia industries on a pro-rata basis. Ms. Major informed the Board that emergency regulation amendments had been developed which would provide for the auctioning of the new source set-aside budget and detailed the emergency regulation provisions for the Board.

In addition to the briefing material and staff presentation, the Board heard from, and asked questions of, representatives of Tenaska, Inc., Virginia Manufacturer's Association, Virginia Energy Providers Association, Old Dominion Electric Cooperative and the State Department of Planning and Budget.

The Board, after discussion, on an amended motion made by Ms. Thomson, tabled Revision F02 until the Board's next meeting and directed the Department to undertake an expedited notice of comment process in order for the Board to have a wider range of comments on the environmental impacts of the proposal. Mr. Baise voted no.

(Note: later in the meeting a public comment process was presented to the Board and the date of the next meeting was established as December 8, 2003.)

Minute No. 8 - Regulation for the Control of Motor Vehicle Emissions in Northern Virginia, Remote Sensing (9 VAC 5 Chapter 91, Rev. MJ)

Ms. Mary E. Major advised the Board that the proposal would make a number of revisions to the Northern Virginia vehicle emissions program in order to conform to changes in Virginia law pertaining to remote sensing. She explained that the amendments reflect new emission standards detected via remote sensing, as well as criteria for conducting random testing of motor vehicle emissions; procedures to notify owners of test results; assessment of civil charges for noncompliance with emissions standards in the current regulation and a subsidy to assist in the repair of certain vehicles. In addition, two specific changes proposed as a result of changes to the law include changing the model year coverage for vehicles subject to remote sensing to include model year 1968 and newer model vehicles and establishing a program to subsidize repair costs of some vehicles identified by remote sensing. The Board, based upon the briefing material and staff presentation, on a motion by Ms. Thomson, unanimously approved the staff recommendation that the Board authorize the Department to promulgate the proposal for public comment.

Minute No. 9 - Consumer Products (9 VAC 5 Chapter 40, Rev. G03)

Mr. Robert A. Mann advised the Board that the Washington Air Quality Committee (MWAQC) has recommended that Maryland, Virginia, and Washington, D.C., adopt regulations for consumer products in order to achieve the necessary reductions of VOC emissions in the Northern Virginia area. He explained that the proposed regulatory action will add a new rule, Emission Standards for Consumer Products in the Northern Virginia Volatile Organic Compound Emissions Control Area (Rule 4-50). The provisions of this rule apply to those persons who sell, supply, offer for sale, or manufacture for sale any consumer product that contains volatile organic compounds. Exempted from the regulation is any consumer product manufactured in the Northern Virginia volatile organic compound emissions control area for shipment and use outside of this area. The provisions of this regulation shall not apply to a manufacturer or distributor who sells, supplies, or offers for sale a consumer product that does not comply with the VOC standards as long as the manufacturer or distributor can demonstrate both that the consumer product is intended for shipment and use outside of the Northern Virginia volatile organic compound emissions control area, and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the consumer product is not distributed to the Northern Virginia volatile organic compound emissions control area. A number of product-specific exemptions are also allowed. The Board, based on the briefing material and staff presentation, on a motion made by Ms. Thomson, unanimously approved the staff recommendation that the Board authorize the Department to promulgate the proposal.

Minute No. 10 - Public Forum

No one appeared during the public forum.

Minute No. 11 - Minutes

On a motion made by Ms. Thomson, the Board unanimously approved the minutes from their meeting on September 12, 2003.

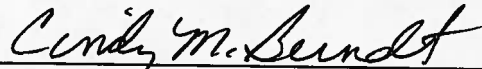
Minute No. 12 - Future Meetings

The Board set December 8, 2003 at 10:00 a.m. as the date of their next meeting. The meeting will be by

electronic communication means and the single agenda item is Revision F02 which would provide for the auctioning of NOx emission credits.

Minute No. 13 - State Advisory Board on Air Pollution - Annual Reports

The Board received three reports from the State Advisory Board entitled: Key Concepts and Description of New Source Review Reform of 2002; PM_{2.5} National Ambient Air Quality Standards (NAAQS) Implementation Recommendations; and Public Participation in Permitting Processes. The Board, as well as the Director of the Department of Environmental Quality, thanked the Advisory Board for the efforts throughout the year.



Cindy M. Berndt