

**MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING
WEDNESDAY, NOVEMBER 3, 2004**

**VIRGINIA BEACH RESORT HOTEL AND CONFERENCE CENTER
2800 SHORE DRIVE
VIRGINIA BEACH, VIRGINIA**

Board Members Present: Richard D. Langford - Chairman
 Karlynn W. Bucher - Vice-Chairman
 Smita Siddhanti
 John N. Hanson

Board Members Absent: Vivian Thomson

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

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., recessed at 2:55 p.m., reconvened at 3:15 p.m. and adjourned at 5:01 p.m.

Minute No. 1 - Federal Documents Incorporated by Reference (9 VAC 5 Chapters 50 and 60, Rev. I04)

– **Final Action - Request for Board Action:** Ms. Karen G. Sabasteanski, Office of Air Regulatory Development presented amendments to the regulations for the control and abatement of air pollution. The amendments would 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. Ms. Sabasteanski advised the Board that:

1. No new NSPS are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
2. No new NESHAP are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
3. Several MACT standards are being incorporated by reference.

In addition, she explained that 9 VAC 5-60-91 was being repealed in order to locate the provisions of 40 CFR 63.16 (National Performance Track) with the other general provisions of Subpart A. Finally, 40 CFR 63.60 and 63.62 (Subpart C, list of hazardous air pollutants, petitions process, lesser quantity designations, and source category list) were being added.

Board Decision: Based on the Board book material, staff presentation and Board discussion, the Board, on a motion made by Mr. Hanson, adopted the amendments, with an effective date of January 1, 2005; affirmed

that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision; and directed the amendments be submitted to EPA in order to retain delegation of authority to enforce the EPA regulations.

Minute No. 2 - Nonattainment Areas (9 VAC 5 Chapter 20), Revision N04 – Final Action: Ms. Karen G. Sabasteanski, Office of Air Regulatory Development, presented an amendment to the regulations for the control and abatement of air pollution reclassifying the Richmond Ozone Nonattainment Area from moderate to marginal. Ms. Sabasteanski explained that the Clean Air Act authorizes EPA to reclassify certain ozone nonattainment areas shortly after the initial classification for such areas and that on September 22, 2004 (69 FR 56697), EPA reclassified the Richmond, Virginia area. The [EPA reclassification of the](#) ozone nonattainment areas becomes effective on November 22, 2004.

Board Decision: Based on the Board book material, staff presentation and Board discussion, the Board, on a motion made by Ms. Bucher adopted the amendments, with an effective date of January 1, 2005; affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision; and directed the amendments be submitted to EPA as a State Implementation Plan Revision.

Minute No. 3 - Consumer Products (9 VAC 5 Chapter 40, Rev. G03) - Public Participation Report and Request for Final Board Action: Mr. Gary Graham, Office of Air Regulatory Development presented amendments to the regulations for the control and abatement of air pollution adding a rule, Emission Standards for Consumer Products in the Northern Virginia Volatile Organic Compound Emissions Control Area (Rule 4-50). Mr. Graham explained that the Clean Air Act mandates that states include in their State Implementation Plans (SIPs) certain control measures. If it is determined that these federally mandated measures will not fill the gap between air quality goals and actual air quality, the SIP must then incorporate additional measures as needed to meet the air quality goals. These additional measures are determined in consultation with locally affected officials, who provide input on control strategy development and associated control measures. In the Northern Virginia area, the pertinent body of locally affected officials is the Metropolitan Washington Air Quality Committee (MWAQC). 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.

Mr. Graham advised the Board that the provisions of the 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 regulation [does](#) 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.

Mr. Graham briefed the Board on the substantive changes being made in the final amendments in response to public comment, specifically delaying the compliance date to July 2005.

The Board also received comment from Joseph Yost, Consumer Specialty Products Association, and Catherine Beckley, Cosmetic, Toiletries and Fragrance Association. Both Mr. Yost and Ms. Beckley addressed the board on [the processing of alternative compliance plans and](#) innovative product applications. The Board advised them that any legal arguments that could be made should be put to writing and submitted to the Board's legal counsel for review prior to the Board's meeting in March 2005.

Board Decision: Based on the Board book material, staff presentation and Board discussion, the Board, on a motion made by Mr. Hanson, adopted the amendments, with revisions provided at the meeting, with an effective date as provided in the Administrative Process Act and directed the amendments be submitted to EPA as a State Implementation Plan Revision.

Minute No. 4 - Regulation for the Control of Motor Vehicle Emissions in Northern Virginia, Remote Sensing (9 VAC 5 Chapter 91, Rev. MJ) - Public Participation Report and Request for Final Board Action:

Ms. Mary E. Major presented final amendments to the regulations for the control of motor vehicle emissions in Northern Virginia. Ms. Major explained the current inspection and maintenance program. She then detailed the amendments being presented for the Board's consideration. In general, the regulation is being amended to reflect new emission standards detected via remote sensing as well as criteria for conduction 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 to the regulation as a result of changes to the state code include the change in the model year coverage for vehicles subject to remote sensing (§ 46.2-1178.1) to include model year 1968 and newer model vehicles, and the requirement to establish a program to subsidize repair costs of some vehicles identified by remote sensing (§ 46.2-1178.2).

Finally, Ms. Major briefed the Board on revisions being made to the original proposal.

Board Decision: Based on the Board book material, staff presentation and Board discussion, the Board, on a motion made by Mr. Hanson adopted the amendments with an effective date as provided in the Administrative Process Act and directed the amendments be submitted to EPA as a State Implementation Plan Revision.

Minute No. 5 - Public Forum: No one appeared during the public forum.

Minute No. 6 – High Priority Violators Report: Mr. Michael Dowd, Division of Enforcement Coordination, presented a report on high priority violators for the third quarter of 2004.

Minute No. 7 – Minutes: The Board on a motion by Ms. Bucher unanimously approved the minutes from the Board's meeting on September 29, 2004.

Minute No. 8 – Report on Air Pollution and Health: Dr. Dudley F. Rochester, MD, Professor Emeritus from the University of Virginia School of Medicine, presented a report on air pollution and health.

Minute No. 9 – State Advisory Board on Air Pollution Reports: The Board received two reports from the State Advisory Board on Air Pollution: Air Quality Status, Trends and Monitoring Network Evaluation and Coal Combustion Control Technologies.

Minute No. 10 – Future Meetings: The Board set March 2, 2005 as the date of their next meeting.