July 21, 2006

Mr. Don Klima, Director
Attention: Mr. John Eddins
Office of Federal Agency Programs
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004

Re: NHPA Section 106 Issues Involving EPA, Virginia DEQ, and the Columbia Forest Products Facility in Chatham, Virginia, Registration No. 30120, AIRS ID No. 51-143-00017.

Dear Mr. Klima:

We request a determination regarding provisions of the National Historic Preservation Act, Section 106, relative to the Columbia Forest Products plant here in Chatham, Virginia, and its intrusion upon nearby historic properties. Three areas of concern are itemized below.

I. The currently-proposed air permit, presently construed as a modification of an existing synthetic-minor state-administered permit, should actually be a federal undertaking as an EPA major-source Title V (of the federal Clean Air Act) permit, because of irregularities in the permit (see section IA, below) and in the history of its administration by the Virginia DEQ (see section IB, below).

A. Regarding the permit itself, we explained our concerns in detail and with extensive references in our public comment on the draft permit, submitted to Allen Armistead at the Lynchburg DEQ office on February 24, 2006. As we outlined, it appears from the DEQ records that since 1996 the plant has exceeded the synthetic-minor permit limits for emissions, as determined from the emission reports themselves and as estimated from observable emissions which have been omitted from the permits and associated reports.

B. Regarding the permit's administration, besides the decade-long excessive emissions and inappropriate permit level, we note the following.

1. By considering plastics-laden woodwastes as equivalent to clean wood fuel and making emissions assumptions accordingly, rather than defining the problematic material as "treated wood" and requiring appropriate safeguards in its disposal process, DEQ has both endangered the neighborhood and greatly reduced the calculated emissions numbers from the plant. Further, the draft permit apparently continues the practice of simplistically using AP-42 factors for determining emissions; EPA's AP-42 document itself does not recommend this practice.

2. DEQ has never enforced the Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 requirements for toxics reporting for this facility, and the plant has thus never submitted a TRI report (we appealed this omission to DEQ Director Robert Burnley on January 5, 2005; and in a detailed request to Samantha Fairchild, Director of the Office of Enforcement, Compliance and Environmental Justice, at the EPA Region III office in Philadelphia on February 25, 2006). Columbia Forest Products' failure to TRI-report modestly improves DEQ's overall emissions numbers for the area and the state.
3. DEQ has refused to sample pollutants emitted from the plant's boiler stack and from the finishing department vents during incidents of inundations. Samples taken on a preprogrammed basis during quiescent periods in late 2004 did not include approximately 40 normal target compounds including those related to plastics-burning which were requested by stakeholders.
4. Columbia Forest Products - Chatham is an EPA MACT standard facility. However, its emissions report to EPA which is included in the MACT standard calculations states formaldehyde emissions which are approximately 1/81 the level reported to DEQ for the same period, and methanol emissions which are approximately 1/19 the level reported to DEQ for the same period. (For every year that we have seen, the plant's emissions as published by EPA differ substantially from DEQ reports.) Additionally, a DEQ engineering analysis of the plant states that because of its (questionable) synthetic-minor status, the facility is exempt from compliance with the MACT standard. Thus there is an appearance of possible creation of unfair competitive advantage by means of strict MACT standards which could be required of other companies by EPA enforcement, but are not required of this MACT data-originating facility. Also conveniently for DEQ, this MACT discrepancy creates a theoretical local industrial recruiting advantage for other entities within this MACT industry grouping.
5. We have been repeatedly advised by DEQ officials at the local and state level that they are utterly reliant on Columbia Forest Products and its consultants for data, design, and policy regarding permits; and that DEQ does not have the expertise or funding to do otherwise. Furthermore, companies in Virginia are "on the honor system" both with regard to their reports and also their descriptions of operations and of the types of permits needed. *"Rather than enforcing environmental law, DEQ encourages good corporate citizenship"* is a superficially pleasant but dangerous spoken mantra. With these policies, and in the absence of unannounced inspections and independently-obtained data, DEQ is reduced to being no more than a rubber stamp and advocate for the regulated industries, rather than offering a regulatory safety net for citizens.
6. News reports of operational expansion, and informal statements from numerous company management, employees, and contractors indicate a significantly different, larger, and more problematic operation than the one formally permitted by DEQ for Columbia Forest Products - Chatham. Without independent oversight from DEQ, there is no way to reconcile the contradictions.

7. DEQ organization and procedures include no meaningful avenue (to a point of authority with independent review) for appeal of policy decisions involving administration of a permit, or the permit itself. The authors of this letter were advised repeatedly that "there is no appeal" beyond the Lynchburg (South Central Region) DEQ office. We are further advised that all correspondence of an appeal nature is referred back to the same Lynchburg DEQ staff, and on to Columbia Forest Products and its consultants, for response. This situation, coupled with the fact that the same inspectors / permit writers handle a permit for many years, or even decades, create a situation in which the regulators are far too involved and allied with the regulated situation for effective oversight of it.
8. We believe that the nonfactual and misleading information provided by DEQ officials to Katherine Kilpatrick (in requesting a "no adverse finding" regarding Section 106 intrusion; see section III below) constituted both a serious ethical lapse and totally unprofessional behavior wholly inappropriate for a government agency created and entrusted to protect its citizenry. We believe the incident is further strong proof that the agency is incapable of unbiased action regarding the Columbia Forest Products permitting processes.

II. EPA delegated responsibility for environmental permits to the Virginia DEQ without compliance with Section 106 of the National Historic Preservation Act. Based on recent court rulings, the state activity in issuing permits is no longer considered a federal undertaking. However, it is our understanding that the EPA delegation of the permitting program to the state was a federal undertaking itself and should have gone through the Section 106 process. It is our understanding that this delegation did not comply with Section 106, and therefore is currently out of compliance with the National Historic Preservation Act. Therefore, it appears that EPA's delegation to Virginia DEQ is currently incomplete and invalid.

However, please note that we believe that in the case of Columbia Forest Products - Chatham, as discussed in section I above, the air permit involved should be a federally-administered permit, and therefore a federal undertaking, rather than state-administered permit, because of the quantities of emissions involved. By the terms of the state delegation, it should revert back to the EPA.

If the regulatory failures evidenced by sections IB1-IB8 above are (as we believe) systemic within Virginia DEQ, rather than local aberrations within the Lynchburg (South Central Regional) district office, we strongly question whether Virginia DEQ as presently administered can or will properly enforce federal environmental law as required. Thus, any.delegation of EPA authority must include a thorough compliance review.

III. As we explained in detail in our letter of June 19, 2006 to David Paylor, Director, Virginia DEQ, we disagree strongly with the June 14, 2006 finding (affirmed on June 27, 2006) by Kathleen Kilpatrick (Director, Virginia Department of Historic Resources; and State Historic Preservation Officer) of "no adverse effect" to the historic properties in the Area of Potential Effects, which includes the Chatham Historic District and other historic properties, regarding the proposed new air permit for Columbia Forest Products. As enumerated in our letter, we believe that her decision was based on incorrect and misleading data provided to her by officials at Virginia DEQ. Her rationale included an undocumentable prediction of lessened smoke by means of a proposed new larger boiler equipment, a statement regarding the small boiler stack's being visually obscured (see stakeholders' opposite concern in IIIC below), an incorrect statement regarding no noise-producing activities (see the actual list in IIID below), and assurance of no archaeological intrusion. Her decision did not include consideration of the following intrusive (and even dangerous) aspects of the permit which concern neighboring stakeholders, and which have been carefully and fully documented throughout this permitting process:

A. A near-doubling of burning, to the point that approximately a million pounds per year of plastics will be burned without monitoring.

B. Failure to include a requirement of (at least) carbon monoxide monitoring as a warning and control indicator of the presence of associated dangerous plastics-burning by-products including cyanides, formaldehyde, acrolein, and other randomly-formed compounds.

C. The proposed stack height is far below the ground level of nearby homes and the town as a whole, and thus far too low to properly disperse pollutants from the deep valley, which is constantly affected by overlying temperature inversions which force the factory's pollutants into the adjacent neighborhoods.

D. Potentially significant new noise sources in the proposed modification include a restricted-diameter boiler stack, a much-larger low-frequency chipper, and the addition of a steam turbine generator.

E. Recent equipment additions and modifications which we believe are not properly recognized or permitted, and are already causing great distress both from noise and from chemical emissions, are apparently being assumed/allowed in this permit without specific mention.

In light of the above circumstances, we hereby request a determination affirming that:

1. The Columbia Forest Products - Chatham air permit should actually be a federal undertaking, administered as an EPA-issued major source permit under Title V.

2. That the EPA's delegation of Virginia DEQ's air program's should be rescinded on the basis of its non-compliance with Section 106, and its current structural and policy failure, and that it eventually be re-delegated after review and documentation of full compliance with federal law.

3. That Section 106 compliance on issues of noise and air pollution be resolved in consultation with historic property-owner stakeholders affected by the Columbia Forest Products - Chatham facility's operation.

Thank you very much for your assistance.

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L. Preston Bryant, Jr., Secretary of Natural Resources, P. O. Box 1475, Richmond, VA 23218-1475
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