

**MINUTES**

**STATE AIR POLLUTION CONTROL BOARD MEETING**

**FRIDAY, JUNE 13, 2014  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
629 EAST MAIN STREET  
TRAINING ROOM  
RICHMOND, VIRGINIA**

**Board Members Present:**

**Richard D. Langford, Chair  
Manning "Chip" Gasch, Jr.  
Jo Anne Scott Webb  
Ann F. Kirwin**

**Tedd H. Jett, Vice-Chair  
Michael D. Overstreet  
Roger Chaffe**

**Department of Environmental Quality:**

**David K. Paylor, Director  
Cindy M. Berndt, Office of Regulatory Affairs Director**

**Attorney General's Office:**

**Matthew L. Gooch, Attorney General's Office**

**These minutes summarize activities that took place at this Board Meeting. The meeting convened at 10:00 a.m. and adjourned at 10:58 a.m.**

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**Minute No. 1 - Review and Approval of Agenda:** The Board approved the agenda with a modification: moved the State Advisory Board on Air Pollution Report to before the High Priority Violators Report.

**Minute No. 2 - Minutes:** The Board, on a motion by Mr. Chaffe, unanimously approved the minutes of the Board's meeting on April 4, 2014.

**Minute No. 3 - Regulation for Dispute Resolution (9VAC5-210 - Rev. B14):** Ms. Debra A. Harris with the Office of Regulatory Affairs presented amendments to the Regulation for Dispute Resolution using the fast track regulatory process. Ms. Harris informed the Board that the regulation was adopted by the Board and became effective on July 1, 2001; however, the authorizing provisions under §10.1-1186.3 of the Code of Virginia make reference to statutory requirements for dispute resolution and mediation under Chapter 20.2 and Chapter 21.2 of Title 8.01 of the Code of Virginia. These chapters have been amended since 9VAC5-210 became effective. Ms. Harris also informed the board that a periodic review was conducted prior to this regulatory action and no comments were received.

Based on the periodic review, Ms. Harris advised the Board that changes to the regulation were necessary to include revised and additional requirements for dispute resolution and mediation

under Title 8.01 of the Code of Virginia and to update the document incorporated by reference. In addition, Ms. Harris presented additional amendments to the regulation based on review by the Attorney General's Office.

Based on the Board book material, staff presentation and Board discussion, on a motion by Ms. Webb,

- The Board authorized the Department to promulgate the proposed Revision B14 to 9VAC5-210, with amendments presented at the meeting, for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial.
- The Board's authorization also constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more members of the public, or any member of the applicable standing committee of either house of the General Assembly or the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
- The Board authorized the Department to set an effective date 15 days after close of the public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

**Minute No. 4 - Emission Standards for Volatile Organic Compounds from Petroleum Liquid Storage and Transfer Operations, Stage II Vapor Recovery (9VAC5-20 and 9VAC5-40, Rev. C14) Fast Track:** Ms. Karen G. Sabasteanski of the Office of Regulatory Affairs presented amendments to the regulations for the control and abatement of air pollution regarding Stage II vapor recovery programs. Ms. Sabasteanski advised the Board that Section 182 (b)(3) of the federal Clean Air Act required the implementation of Stage II vapor recovery in ozone nonattainment/maintenance areas, including Northern Virginia and Richmond. Since then, in accordance with § 202(a)(6) of the Act, the U.S. Environmental Protection Agency (EPA) has determined that onboard refueling vapor recovery is in widespread use throughout the motor vehicle fleet, thus obviating the need to maintain Stage II vapor recovery programs (see 77 FR 28772). The department has examined whether Stage II is still necessary for ozone control purposes and has determined that Stage II is no longer needed. Removing this control requirement does not interfere with maintenance of any ozone standard. Therefore, on November 12, 2013 and March 19, 2014 the department submitted revisions to the SIP that satisfy all requirements of the federal Clean Air Act and EPA guidance regarding the removal of Stage II requirements from the Richmond and Northern Virginia attainment plans. Virginia's specific Stage II requirements are found in Article 37 of 9VAC5-40, and must now be amended accordingly.

Ms. Sabasteanski reviewed the following substantive amendments to the regulation:

1. The date of the most current Code of Federal Regulations has been updated (9VAC5-20-21 B) and the Petroleum Equipment Institute guidance document needed to meet the decommissioning requirements of 9VAC5-40-5220 F 8 is incorporated by reference (9VAC5-20-21-E 15).
2. 9VAC5-5220 F 7 has been added to reflect the fact that the Stage II vapor controls are no longer required in the Northern Virginia VOC Control Area (where widespread use became

effective after December 31, 2013) and will cease to be effective as of January 1, 2017 (when widespread use will become effective) for the Richmond VOC Control Area.

3. 9VAC5-40-5520 F 8 and 9 have been added to specify requirements for either the decommissioning or continuing implementation of Stage II equipment.

4. A citation at 9VAC5-40-5270 has been corrected.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Chaffe, unanimously:

1. Authorized the department to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Authorized the department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

**Minute No. 5 - Major New Source Review (9VAC5 Chapter 80, Rev. D14) Fast Track:** Ms. Karen G. Sabasteanski of the Office of Regulatory Affairs presented amendments to the regulations for the control and abatement of air pollution concerning major new source review reform. Ms. Sabasteanski informed the Board that Article 8 of 9VAC5-80 establishes a new source review (NSR) permit program whereby owners of sources locating in prevention of significant deterioration (PSD) areas are required to obtain a permit prior to construction of a new facility or modification of an existing one; Article 9 of 9VAC5-80 establishes an NSR permit program whereby owners of sources locating in nonattainment areas are required to obtain a permit prior to construction of a new facility or modification of an existing one; and Part III of 9VAC5-85 establishes an NSR permit program in PSD areas for sources of greenhouse gases (GHGs). EPA's major NSR reform rules incorporated several elements, including changes to the method for determining baseline actual emissions, and provisions to allow for compliance with plantwide applicability limits (PALs).

Ms. Sabasteanski advised the Board that on April 4, 2014, the State Air Pollution Control Board approved a petition from the Virginia Manufacturers Association to make certain elements of the major NSR program consistent with the U.S. Environmental Protection Agency (EPA) regulations, and directed the Department of Environmental Quality to amend Articles 8 and 9 accordingly. The requested changes are: (1) amend the definition of "baseline actual emissions" to allow the use of a 10-year lookback period; (2) amend the definition of "baseline actual emissions" to allow the use of different lookback periods for different regulated NSR pollutants; (3) amend PAL requirements such that a PAL effective period is for 10 years; and (4) amend the definition of "emissions unit" and add a definition of "replacement unit" to enable the use of the

baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit. She then reviewed the substantive amendments to the regulations:

1. The definition of "baseline actual emissions" in 9VAC5-80-1615 C and 9VAC5-80-2010 C will be amended to conform the Virginia regulation to the federal requirements of 40 CFR 51.166(b)(47) and 40 CFR 51.165(a)(1)(xxxv). This will extend the lookback period from 5 to 10 years.
2. The definition of "baseline actual emissions" in 9VAC5-80-1615 C and 9VAC5-80-2010 C, and 9VAC5-80-1865 E and 9VAC5-80-2144 E, will be amended to conform the Virginia regulation to the federal requirements of 40 CFR 51.166(b)(47) and 40 CFR 51.166(w), and 40 CFR 51.165(a)(1)(xxxv) and 40 CFR 51.165(f)(6). This will enable different lookback periods for different regulated NSR pollutants.
3. 9VAC5-80-1615 C, 9VAC5-80-1685 C 1 f, 9VAC5-80-2010 C and 9VAC5-80-2144 C 1 will be amended to conform the Virginia regulation to the federal requirements of 40 CFR 51.166(w) and 40 CFR 51.165(f). This will increase the PAL effective period from 5 years to 10.
4. The definitions of "emissions unit" will be amended to conform the Virginia regulation to the federal requirements of 40 CFR 51.166(b)(7) and 40 CFR 51.165(a)(1)(vii), and a definition of "replacement unit" will be added in 9VAC5-80-1615 C and 9VAC5-80-2010 C in accordance with 40 CFR 51.166(b)(32) and 40 CFR 51.165(a)(1)(xxi). This will enable use of the baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit.
5. The definitions of "baseline actual emissions for a GHG PAL" and "PAL effective period" in 9VAC5-85-50 will be amended to conform the Virginia regulation to the federal requirements of 40 CFR 52.21(aa)(2)(xiii) and 40 CFR 52.21(aa)(2)(vii). This will extend the lookback period from 5 to 10 years, and remove a requirement that prohibits different lookback periods for different regulated NSR pollutants.
6. The definition of "emissions unit" in 9VAC5-85-550 will be amended to conform the Virginia regulation to the federal requirements of 40 CFR 51.166(b)(7) and 40 CFR 51.165(a)(1)(vii), and a definition of "replacement unit" will be added in 9VAC5-85-50 C in accordance with 40 CFR 51.166(b)(32) and 40 CFR 51.165(a)(1)(xxi). This will enable use of the baseline actual emissions of the unit being replaced and the projected actual emissions of the replacement unit.
7. 9VAC5-85-55 will be amended to conform the Virginia regulation to the federal requirements of 40 CFR 52.21(aa). This will increase the PAL effective period from 5 years to 10.

Based on the Board book material, the staff presentation and Board discussion, the Board, on a motion by Mr. Jett, unanimously:

1. Authorized the department to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the

department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. Authorized the department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

**Minute No. 6 - State Advisory Board on Air Pollution Report - Comparison of Virginia's Minor New Source Review Permit Exemption Provisions with Those of Surrounding States:** Mr. Dick presented the report on minor new source review permit exemption provisions to the Board. He explained how the Advisory Board had conducted the study, reviewed how Virginia compared with the other states and advised the Board that based on the study the Advisory Board does not believe that changes to Virginia's minor NSR permit exemption rates and related regulatory provisions are justified at this time for the following reasons:

- Efforts to issue permits to these example minor sources within Virginia would impose a significant administrative burden on the DEQ's staff and resources with no environmental benefit.
- These example sources are subject to existing federal regulations which contain provisions and requirements that affect air quality regardless of whether a permit is issued by the state agency or not. Often, the permit merely recites the requirement to comply with these existing rules and, thus, appears inconsequential.
- The permitting efforts represented by these surrounding jurisdictions appear to essentially constitute a source registration process. The agencies are using the issuance of a permit as a surrogate measure to acquire knowledge of the existence of these minor sources.
- The conditions within the permits being issued by other states for these example sources, the actual pollutant emission rates are not limited or further controlled. The issuance of permits for these sources does not appear to affect air quality.

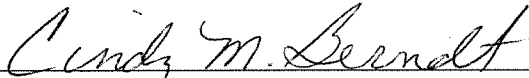
The Board received the report and thanked the Advisory Board for their work.

**Minute No. 7 - High Priority Violators (HPV's) For the Second Quarter, 2014:** Ms. Kerri Nicholas with the Division of Enforcement presented a report on high priority violators for the second quarter of 2014.

**Minute No. 8 - Public Forum:** No one appeared during the public forum.

**Minute No. 9 - Division Director's Report:** Mr. Michael Dowd of the Air Division briefed the Board on recent activity on the U.S. Environmental Protection Agency's (EPA) mercury rule, cross-state transport rule, and proposed clean power rule.

**Minute No. 10 - Future Meetings:** The Board confirmed September 5 and December 5 as the dates of their next meetings.

  
Cindy M. Berndt, Office of Regulatory Affairs

*Approved Minute # 2  
Sept. 5, 2014*