

MINUTES

STATE AIR POLLUTION CONTROL BOARD MEETING

**FRIDAY, SEPTEMBER 5, 2014
HOUSE ROOM C
GENERAL ASSEMBLY BUILDING
9TH & BROAD STREETS
RICHMOND, VIRGINIA**

Board Members Present:

**Richard D. Langford, Chair
Manning "Chip" Gasch, Jr.
Samuel A. Bleicher**

**Tedd H. Jett, Vice-Chair
Ann F. Kirwin
Rebecca R. Rubin**

Board Members Absent:

Michael D. Overstreet

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 10:01 a.m. and adjourned at 11:07 a.m.

Minute No. 1 - Review and Approval of Agenda: The Board approved the agenda.

Minute No. 2 - Minutes: The Board, on a motion by Mr. Gasch , unanimously approved the minutes of the Board's meeting on June 13, 2014.

Minute No. 3 - Definition of Volatile Organic Compound (9VAC5-10, Rev. E14) - Request to Publish Proposal for Public Comment and Use the Fast-Track Process: Ms. Karen G. Sabasteanski of the Office of Regulatory Affairs presented fast-track amendments to the regulations for the control and abatement of air pollution concerning the definition of volatile organic compound. Ms. Sabasteanski explained that Section 109 (a) of the federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) to protect public health. Section 110 mandates that each state adopt and submit to EPA a state implementation plan (SIP) which provides for the implementation, maintenance, and enforcement of the NAAQS. Ozone, one of the pollutants for which there is a NAAQS, is in part created by emissions of volatile organic compounds (VOCs). Therefore, in order to control ozone, VOCs must be addressed in Virginia's SIP.

Ms. Sabasteanski advised the Board that on March 27, 2014 (79 FR 17037), EPA revised the definition of VOC to exclude 2-amino-2-methyl-1-propanol (also known as AMP) and the proposed fast-track amendment to Chapter 10 would revise the list of substances not considered to be VOCs in Virginia to include 2-amino-2-methyl-1-propanol.

Based on the Board book material, staff presentation and Board discussion, on a motion by Ms. Kerwin, (1) the Board authorized the Department to promulgate the proposed Revision E14 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; (2) 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; and (3) 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 - General Administration, Conflict of Interest (9VAC5-170, Rev. F14) - Request for Board Action on Exempt Final Regulation: Ms. Karen G. Sabasteanski of the Office of Regulatory Affairs presented exempt final amendments to the regulations for general administration regarding conflict of interest. Ms. Sabasteanski explained that Section 110(a)(2)(E)(ii) of the federal Clean Air Act requires that each applicable state implementation plan (SIP) provide requirements that the state comply with the requirements respecting state boards under § 128 of the Act.

Subdivision (a)(1) of § 128 requires that each SIP contain requirements that any board or body that approves permits or enforcement orders under the Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under the Act. In Virginia, this is addressed in Code of Virginia § 10.1-1302, which states that no person appointed to the Board shall be employed by persons subject to permits or enforcement orders of the Board or receive a significant portion of his income, whether directly or indirectly, from persons subject to permits or enforcement orders of the Board.

Subdivision (a)(2) of § 128 requires that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. With respect to subdivision (a)(2), the director of the Virginia Department of Environmental Quality issues air permits (§ 10.1-1322 and 9VAC5-170-180), and the State Air Pollution Control Board may issue a permit under § 10.1-1322.01. The authority to issue enforcement orders resides with the Board (§ 10.1-1307 D) and the department director (§ 10.1-1307.3 and 9VAC5-170-180). Because there are no provisions in Virginia Code or the Board's regulations that directly address § 128(a)(2), the Virginia SIP must be amended to incorporate the requirements of § 128(a)(2); the mechanism for accomplishing this is through the Regulation for General Administration, which covers general administrative actions by:

1. Adding definitions of "disclosure form" and "potential conflict of interest" to 9VAC5-175-220.
2. Adding a new Part IX that covers the Clean Air Act conflict of interest requirements of § 128(a)(2).
3. Adding a new section 9VAC5-175-210 to require that in accordance with § 128(a)(2) of the federal Clean Air Act, the Board and the director, in their capacity of approving permits or enforcement orders, must adequately disclose any potential conflicts of interest.

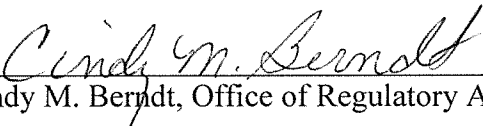
The Board, based on the Board book material, staff presentation and Board discussion, on a motion by Mr. Jett unanimously adopted the amendments and affirmed that the Board will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided by § 2.2-4006 B of the Administrative Process Act.

Minute No. 5 - 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 third quarter of 2014.

Minute No. 6 - Public Forum: No one appeared during the public forum.

Minute No. 7 - Division Director's Report: Mr. Michael Dowd of the Air Division briefed the Board on the U.S. Environmental Protection Agency's (EPA) emission guidelines to regulate CO₂ from fossil fuel electric generating units under §111(d) of the Clean Air Act.

Minute No. 10 - Future Meetings: The Board confirmed December 8 as the date of their next meeting.


Cindy M. Berndt, Office of Regulatory Affairs