

## MINUTES

### STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, SEPTEMBER 9, 2016  
HOUSE ROOM C  
GENERAL ASSEMBLY BUILDING  
9TH & BROAD STREETS  
RICHMOND, VIRGINIA

#### Board Members Present:

Richard D. Langford, Chair  
Samuel A. Bleicher  
Nicole M. Rovner  
William H. Ferguson

Anne Flandermeyer Kirwin  
Rebecca R. Rubin  
Ignacia S. Moreno

#### 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

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These minutes summarize activities that took place at this Board Meeting. The meeting convened at 10:02 a.m. and adjourned at 11:30 a.m.

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

**Minute No. 2 - Minutes:** The Board, on a motion by Ms. Kirwin, approved the minutes of the Board's meeting on June 17, 2016. The vote was 5 – 0 with Ms. Moreno and Mr. Ferguson abstaining.

**Minute No. 3 - Ozone Implementation (9VAC5-20 and -30, 9VAC5-151, 9VAC5-160, Rev. G16):** Ms. Karen Sabasteanski, Office of Regulatory Affairs, presented final regulatory amendments regarding a U.S. Environmental Protection Agency rule (March 6, 2015 - 80 FR 12264) implementing the 2008 ozone national ambient air quality standards (NAAQS). The EPA rule addresses a range of nonattainment area state implementation plan (SIP) requirements for the 2008 ozone NAAQS, including how to address the revoked 1997 ozone NAAQS. Ms. Sabasteanski advised that the Board's ambient air quality regulation must be amended accordingly, as well as the list of nonattainment areas to reflect this change; and that clarifying text would also be needed in the Regulation for Transportation Conformity and the Regulation for General Conformity.

Specifically, Ms. Sabasteanski briefly reviewed the following substantive amendments to the regulations:

1. The list of nonattainment areas has been modified in order to indicate that the revoked 1997 ozone standard does not apply. [9VAC5-20-204]
2. The 1997 ozone standard is revoked. [9VAC5-30-55]
3. The applicability section of the Regulation for Transportation Conformity has been amended to indicate that conformity determinations are not required in areas designated nonattainment or maintenance under the revoked 1997 ozone standards. [9VAC5-151-20]
4. The applicability section of the Regulation for General Conformity has been amended to indicate that conformity determinations are not required in areas designated nonattainment or maintenance under the revoked 1997 ozone standards. [9VAC5-160-30]

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Rovner, unanimously adopted the proposal with an effective date consistent with the APA and affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the APA.

**Minute No. 4 - Commercial/Industrial/Solid Waste Incinerators (9VAC5-40, Revision F16):**

Ms. Karen Sabasteanski, Office of Regulatory Affairs, presented final regulatory amendments regarding a U.S. Environmental Protection Agency rule (June 23, 2016 - 81 FR 40956), amending the emissions guidelines for commercial/industrial/solid waste incinerators, Subpart DDDD of 40 CFR Part 60. The amendments were made in order to (i) revise the definitions of "continuous emission monitoring system data during startup and shutdown periods" and "kiln"; (ii) revise the particulate matter limit for the waste-burning kiln subcategory; (iii) revise the fuel variability factor for coal-burning energy recovery units; and (iv) remove the provisions for affirmative defense. Ms. Sabasteanski advised the Board that Subpart DDDD is implemented through Article 45, Emission Standards for Commercial/Industrial Solid Waste Incinerators, 9VAC5-40-6250 et seq. of 9VAC5-40 (Existing Stationary Sources) and although the provisions of Subpart DDDD are adopted by reference into Article 45, some revisions to Article 45 are needed in order for it to correctly track with the EPA revisions.

Ms. Sabasteanski briefly reviewed the amendments to Article 45 of 9VAC5-40.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Bleicher, unanimously adopted the proposal with an effective date consistent with the APA and affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the APA.

**Minute No. 5 - Federal Operating Permits (9VAC5-80, Revision E16):** Ms. Karen Sabasteanski, Office of Regulatory Affairs, presented final regulatory amendments regarding a decision of U.S. Court of Appeals for the District of Columbia Circuit (NRDC v. EPA, No. 10-1371) that held that certain provisions creating an affirmative defense for violations of emission limits during periods of startup, shutdown, or malfunction (SSM) are illegal, and state plans must be amended accordingly. Ms. Sabasteanski also informed the Board that the U.S. Environmental Protection Agency (June 3, 2016) is proposing to remove affirmative defense

provisions from the Title V operating permit program at 40 CFR Part 70. Ms. Sabasteanski advised the Board that the Title V permitting program is implemented through Articles 1 and 3 of 9VAC5-80 and amendments to the Board's regulations were necessary to implement the Court's decision.

Ms. Sabasteanski briefly reviewed the amendments to 9VAC5-80-250 and 9VAC5-80-650.

Based on the Board book material, staff presentation and Board discussion, the Board unanimously adopted the proposal with an effective date consistent with the APA and affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the APA.

The Department, in response to a request from Mr. Bleicher, will report to the Board on implementation of the amendments.

**Minute No. 6 - Clean Air Interstate Rule (CAIR) Program (Parts II through IV of 9VAC5-140, Revision D16):** The Clean Air Interstate Rule (CAIR) was an emissions trading program intended to control nitrogen oxides (NO<sub>x</sub>) and sulfur dioxide (SO<sub>2</sub>) which contribute to harmful levels of fine particle matter and ozone in downwind states. On August 8, 2011 (76 FR 48208), EPA replaced CAIR with the Cross-State Air Pollution Rule (CSAPR). CSAPR Phase 1 implementation was scheduled for 2015, with Phase 2 beginning in 2017. CSAPR is being implemented in Virginia under the associated federal implementation plan (FIP) and no further regulatory action is needed at the state level for this purpose.

Chapter 291 of the 2011 Acts of Assembly requires that §§ 10.1-1327 and 10.1-1328, and any regulations implementing CAIR, be repealed when facilities in the Commonwealth become subject to the requirements of a FIP adopted by EPA in response to the remand of CAIR. Because CAIR has been replaced by CSAPR, and Virginia is subject to the CSAPR FIP, Virginia may now, as required by Chapter 291, repeal its CAIR regulations.

The Department is requesting approval of draft final regulation amendments repealing Parts II through IV of 9VAC 4-140 that meet state requirements and federal statutory and regulatory requirements.

Based on the Board book material, staff presentation and Board discussion, the Board unanimously adopted the proposal with an effective date consistent with the APA and affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the APA.

**Minute No. 7 - High Priority Violations (HPVs) For the Second Quarter 2016:** The Board received a report from Ms. Kerri Nicholas, Division of Enforcement, on high priority violations for the third quarter of 2016.

**Minute No. 7 – Public Forum:** No one appeared during the public forum.

**Minute No. 8 – Division Director's Report:** Mr. Michael Dowd, Air Division Director, provided the Board with information on the current ozone season monitoring results. Mr. Dowd also briefed the Board on the Governor's Executive Order No. 57 regarding the reduction of carbon emissions and the growth of clean energy economy under existing state authority.

**Minute No. 9 – Future Meetings:** The Board confirmed December 5 as the date of the last meeting in 2016.

  

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Cindy M. Berndt

*Approved Minute No. 2 - Dec. 5, 2016*