

MINUTES

STATE AIR POLLUTION CONTROL BOARD MEETING

THURSDAY, MARCH 16, 2017
HOUSE ROOM C
GENERAL ASSEMBLY BUILDING
9TH & BROAD STREETS
RICHMOND, VIRGINIA

Board Members Present:

Richard D. Langford, Chair
Anne Flandermeyer Kirwin
Ignacia S. Moreno
Rebecca R. Rubin

Samuel A. Bleicher, Vice-Chair
Nicole M. Rovner
William H. Ferguson

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 10:03 a.m. and adjourned at 10:55 a.m.

Minute No. 1 - Review and Approval of Agenda: The Board approved the agenda with the addition of an item for the election of a vice-chair.

Minute No. 2 – Election of a Vice-Chair: Mr. Samuel A. Bleicher was elected Vice-Chair by acclamation based on a motion by Ms. Rubin seconded by Mr. Ferguson.

Minute No. 3 - Minutes: The Board, on a motion by Mr. Ferguson and seconded by Ms. Kirwin, unanimously approved the minutes of the Board's meeting on December 5, 2016.

Minute No. 4 - PM_{2.5} Implementation (9VAC5-30, 9VAC5-80 and 9VAC5-160, Rev. A17) - Request for Board Action on Exempt Final Regulations: Ms. Karen G. Sabasteanski of the Office of Regulatory Affairs presented exempt final amendments to the Regulations for the Control and Abatement of Air Pollution concerning implementation of the 2012 national ambient air quality standard (NAAQS) for fine particulate matter (PM_{2.5}). Ms. Sabasteanski explained that the amendments were necessary to respond to the U.S. Environmental Protection Agency's (EPA) August 24, 2016 (81 FR 58010), final implementation rule for the 2012 national ambient air quality standard (NAAQS) for PM_{2.5} that addressed a range of nonattainment area state implementation plan (SIP) requirements, including how to address the revoked 1997 PM_{2.5} NAAQS.

Ms. Sabasteanski reviewed the substantive amendments.

1. The 1997 PM_{2.5} ambient air quality standard is revoked. [9VAC5-30-65]
2. The applicability section of Rule 8-9 is amended to indicate that different pollutants are not summed to determine applicability of a major stationary source or major modification. [9VAC5-80-2000]

3. The definition of "regulated NSR pollutant" in Rule 8-9 is amended to specify precursors of PM_{2.5}. [9VAC5-80-2010 C]
4. The definition of "significant" in Rule 8-9 is amended to specify precursors of PM_{2.5}. [9VAC5-80-2010 C]
5. The applicability section of the Regulation for General Conformity is amended to specify PM_{2.5} precursors in the list of emissions applicability rates. [9VAC5-160-30 E]

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. 5 - Title V Program Fees (9VAC5 Chapter 80, Rev. K16) - Regulation Development Report and Request to Publish Proposal for Public Comment: Mr. Gary E. Graham of the Office of Regulatory Affairs presented proposed amendments to the Regulations for the Control and Abatement of Air Pollution concerning Title V fees. Mr. Graham advised the Board that Title V of the federal Clean Air Act requires that Title V permit programs be fully funded through Title V program fees. In the Commonwealth, Title V permit programs are funded through permit program emissions fees (Article 2, Chapter 80 of the Regulations for the Control and Abatement of Air Pollution), permit application fees (Article 10, Chapter 80), and annual permit maintenance fees (Article 11, Chapter 80).

Mr. Graham informed the Board that as the permit programs achieve their goal of reducing emissions, Title V permit program emissions fee revenue has decreased and is projected to decrease to the point that total fee revenue will no longer cover the costs of the Title V permit programs. He explained that the purpose of the regulatory action is to (i) increase Title V fees so that they continue to fully fund the Title V permit program, and (ii) to restructure the Title V fee schedule to better reflect the actual costs of the Title V permit program, thereby improving Title V permit program revenue stability.

Mr. Graham reviewed the public participation process that the Department utilized to assist in the development of a proposal and reviewed the following substantive amendments:

1. Definitions of "greenhouse gases" and "regulated pollutant (for fee calculation)," are added and the definition of "actual emissions" is revised so that emissions of greenhouse gases will be excluded from the calculation of permit program emissions fees.
2. A new section is added to Chapter 80, Article 2 providing an equivalent method of calculating permit program emissions fees applicable to future billing years. In this new section, permit program emission fee rates for billing years 2018 and 2019 are specified, reflecting incremental 18.6% and 15% increases in the permit program emission fee rates over those two years, respectively. Also, a new and equivalent method of calculating CPI adjustments is provided for billing years after 2019. That new method of calculating CPI adjustments for permit program emissions fees is the same method that is currently used for annual CPI adjustments for permit application fees and annual permit maintenance fees. Provisions for excess emissions fees are unchanged. Various changes are made to the existing permit program emissions fee calculation section as necessary to conform to and implement this new section.
3. A new section is added to Chapter 80, Article 10 specifying new, increased base permit application fee amounts that will be applicable in future years. Annual CPI adjustments are applied as before except the annual adjustment for 2019 is specified to be 10% more than the permit application fee rates applicable in the previous calendar year. Provision is made for applications filed before the effective date of this amendment and modified on or after that date such that the new permit application fee structure is applicable to that application but any permit application fee amount previously paid for that application is credited toward the new permit application fee amount. Various changes are made to the existing permit application fee calculation section as necessary to conform to and implement this new section.
4. A new section is added to Chapter 80, Article 11 specifying new, increased base permit maintenance fee amounts that will be applicable in future years. Annual CPI adjustments are applied as before except that the fee adjustments for

certain permit types are individually specified for billing years 2019 and 2020. A new minimum permit maintenance fee is specified for synthetic minor sources and that fee is also adjusted annually. Various changes are made to the existing permit maintenance fee calculation section as necessary to conform to and implement this new section.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Rubin, unanimously authorized the department to promulgate the proposal for public comment.

Minute No. 6 - Carbon Dioxide Emissions - Presentation of Petition for Rulemaking and Plan for Disposition: Ms. Karen G. Sabasteanski, Office of Regulatory Affairs, presented the following petition for rulemaking from Susan V. Coleman:

The petitioner is requesting the Board to adopt regulations to simultaneously promulgate both an emergency rulemaking and a formal rulemaking to limit and reduce total CO₂ pollution in the Commonwealth by 30% by 2030, from its largest source, electric generating units.

As a citizen of the Commonwealth of Virginia, I hereby petition the Department of Environmental Quality's Air Pollution Control Board to simultaneously promulgate both an emergency rulemaking and a formal rulemaking to limit and reduce total carbon dioxide pollution in the Commonwealth by 30% by 2030, from its largest source, electric generating units.

The Air Pollution Control Board has clear legal authority to limit and reduce carbon pollution and other greenhouse gases (GHG), by powers vested by the Virginia Code (§§ 10.1-1300-1308). Specifically, Virginia law provides that the Air Board "shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth . . ." (§ 10.1-1308(A)). Virginia law clearly encompasses carbon dioxide in its legal definition of air pollution: "Air pollution means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property" (§ 10.1-1300). Moreover, the Air Board has already identified carbon dioxide and other GHGs as a category of emissions that shall be "subject to regulation" (9 VAC 5-85-30(C)). Most importantly, limiting and reducing carbon pollution would achieve the Board's charge to prevent harm to "public health, safety or welfare; the health of animal or plant life; [and] property, whether . . . recreational, commercial, industrial, [or] agricultural" (9 VAC 10 Chapter 10).

As a nurse, I am working in the public health sphere and believe the Air Board should limit and reduce carbon pollution to protect human and economic health, because:

- Carbon pollution is an immediate threat to human health and the economy: sea level rise makes Virginia's coast one of the most imperiled places in the nation. As sea levels continue to rise, storm surges become higher as well, making most of the Hampton Roads region vulnerable to hurricane flooding. Without significant infrastructure investment, Tangier Island may be uninhabitable by the end of the century. Inland areas will see worsened flooding as well, due to heavy storm precipitation, which increased 27% between 1958 and 2012 across the Southeast. Henry Paulson's Risky Business Institute estimates there will be \$17.5 billion in additional sea-level rise damage and storm damage in Virginia by 2030. We have a duty to exhibit moral leadership.
- Warmer temperatures also increase ozone levels, aggravating lung diseases such as asthma, including in Richmond, which already suffers some of the worst asthma rates in America. This issue significantly and disproportionately impacts the youth of Virginia, both in productivity and in quality of life.
- Carbon pollution immediately threatens plant and animal life. Climate change will likely reduce the productivity of livestock, which comprise the bulk of Virginia's farm commodities. Hotter summers will likely reduce corn yields, one of Virginia's largest crop commodities. In addition, the threat of emerging zoonotic diseases due to climate changes not only threatens livestock, but human health. Veterinary, environmental and human health are all inextricably linked.
- Injury to property, both public and private, is already occurring today: the Norfolk Naval Base is impacted in a variety of ways, including impaired electricity availability, transportation inaccessibility,

and piers that must be raised at a cost of \$60 million each. Weakened armed forces bases poses a great risk to national security.

- In addition to concerns of public health and safety, climate change wreaks havoc on cross-sector stakeholders caused by displacement, transportation and utility interruptions, and increases in disease incidence related to flooding conditions and disrupted housing.
- The cost of prevention, whether measured in dollars or lives impacted, is so much less than that of attempting to recover after tragedy.

The Air Board can cost effectively limit and reduce carbon pollution by 30% from 2015 levels by 2030 because:

- Virginia already reduced carbon emissions by a similar amount between 2000 and 2015, while the state economy continued to grow.
- 30% by 2030 would be similar to the amount required in Virginia by the U.S. EPA's Clean Power Plan, which underwent significant economic analysis, and which Governor McAuliffe already supports.
- Doing so would benefit the economy, because clean energy resources like solar, wind, and energy efficiency are now as affordable as, or more affordable than, conventional carbon-based energy resources.

For the above-stated legal, economic, and human health and safety reasons, I hereby petition the Air Pollution Control Board to initiate an emergency and formal rulemaking.

In addition Ms. Sabasteanski reviewed the statutory and regulatory requirements for processing the petition.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Kirwin, unanimously (1) received the petition; (2) directed the staff to file notice of the petition with the Registrar and include a public comment period of at least 90 days; and (3) asked DEQ to provide the Board book material on this matter approximately 3 weeks in advance of the meeting that includes Board consideration of the petition on the agenda.

Minute No. 7 - High Priority Violations (HPV's) for the First Quarter, 2017: The Board received a report from Ms. Kerri Nicholas, Division of Enforcement, on high priority violations for the first quarter of 2017.

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

Minute No. 9 – Future Meetings: The Board confirmed June 22, September 21 and December 7, 2017, as the dates of the future meetings.

Minute No 10 – Division Directors Report: There was no official Division Director's report, but in response to questions from the Board there was brief discussion of possible impacts of federal budget cuts on the Department.


Cindy M. Berndt

Approved Minute No. 2 - June 22, 2017