



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

David K. Paylor  
Director

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### MEMORANDUM

**TO:** Members of the Virginia Waste Management Board

**FROM:** David K. Paylor 

**DATE:** December 15, 2017

**SUBJECT:** Minutes

Attached are the minutes from your meeting on February 24, 2017. Staff will seek your approval of these minutes at your next regular meeting on January 8, 2018.

If you have any questions, please contact Debra Harris at (804) 698-4209 or [Debra.Harris@deq.virginia.gov](mailto:Debra.Harris@deq.virginia.gov).

Attachment  
cc: Cindy Berndt, DEQ

**MINUTES**  
**VIRGINIA WASTE MANAGEMENT BOARD MEETING**

**FRIDAY, FEBRUARY 24, 2017**  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
2<sup>ND</sup> FLOOR CONFERENCE ROOM  
629 E. MAIN STREET  
RICHMOND, VIRGINIA

**Board Members Present:**

EJ Scott, Chair

Michael Benedetto

Jeffery Crate

Eric DeGroff

Amarjit Riat

Eric Wallace

Steven Yob

**Department of Environmental Quality:**

David K. Paylor, Director

Cindy M. Berndt

Debra A. Harris

**Attorney General's Office:**

Kelci Block, Assistant Attorney General

These minutes summarize activities that took place at this Board meeting. The meeting was convened by the chairperson, Ms. EJ Scott, at 1:04 p.m. and was adjourned at 2:20 p.m.

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**Minute No. 1 - Minutes.**

On a motion by Mr. Crate and seconded by Mr. Riat, the Board unanimously approved the minutes from the Board's meeting on June 20, 2016.

**Minute No. 2 – *Regulations Governing the Transportation of Hazardous Materials (9VAC20-110)* - Annual Update 2016, Final Exempt Action.**

Ms. Debra Harris of DEQ's Office of Regulatory Affairs presented an amendment to the Board's Regulations Governing the Transportation of Hazardous Materials, 9VAC20-110. Ms. Harris explained that each year, the U.S. Department of Transportation makes changes to the federal regulations regarding the transportation of hazardous materials in Title 49 of the Code of Federal Regulations (49 CFR). As 9VAC20-110 incorporates certain parts of Title 49 of the CFR, it is necessary to amend 9VAC20-110 in order to incorporate the federal changes. Ms. Harris informed the Board that Annual Update 2016 will incorporate the applicable changes to 49 CFR to the most current CFR published October 1, 2016. Ms. Harris explained that this regulatory action was exempt from the Administrative Process Act (APA) under Section 2.2-4006.A.4(c). This exemption allows the Board to adopt this regulatory amendment as a final exempt action as the changes are necessary to conform to changes in the federal regulations and the amendment will become effective 30 days after publication in the Virginia Register.

Based on the Board book material and staff presentation, the Board, on a motion of Mr. Benedetto and seconded by Mr. DeGroff, unanimously voted to adopt Annual Update 2016 amendment to 9VAC20-110 as a final regulation, authorized its publication, and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Minute No. 3 - *CCR Amendment, Virginia Solid Waste Management Regulations (9VAC20-81)* – Final Exempt Action.**

Ms. Kathryn Perszyk of DEQ's Office of Financial Responsibility and Waste Programs presented a regulatory amendment to 9VAC20-81 to the Board for their consideration for adoption. Ms. Perszyk explained that this action will revise the

Virginia Solid Waste Management Regulations, 9VAC20-81, in order to incorporate changes to the federal regulations concerning inactive coal combustion residual (CCR) surface impoundments. Ms. Perszyk provided the Board a timeline on the federal rule noting that this was published on August 5, 2016 by the EPA in the Federal Register as a direct final rule (“Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Extension of Compliance deadlines for Certain Inactive Surface Impoundments; Response to Partial Vacatur” (CCR extension rule)) and became effective October 4, 2016. Ms. Perszyk explained the provisions of the CCR extension rule such as the removal of the incentive to close early. Prior to this rule, federal regulations allowed inactive CCR surface impoundments to complete closure by April 17, 2018 and meet other notification requirements (“early closure provision”) to avoid having to meet the same requirements as existing CCR surface impoundments. However, the CCR extension rule requires all inactive CCR impoundments to meet existing CCR requirements and provides an extension to allow these facilities to comply by extending the compliance deadlines for qualifying inactive CCR impoundments by 547 days. The Board asked clarifying questions on the extended deadline and on the facilities effected. Mr. Justin Williams, Division of Land Protection and Revitalization Director, responded to these question and noted that the extension to the original deadline was necessary as many of the deadlines had passed and these inactive CCR impoundments, which are now subject to additional requirements under the CCR extension rule, will need additional time to meet these requirements. Mr. Williams also responded to questions from the Board regarding compliance for existing facilities which were going through the closure process that was vacated by the Court. Ms. Perszyk then noted that as Virginia previously adopted the federal requirements regarding CCR landfills and surface impoundments by incorporation of the federal requirements by reference into Virginia’s Solid Waste Management Regulations (VSWMR), this regulatory amendment was now necessary in order to incorporate the revised federal requirements due to the Court’s partial vacatur of the previously adopted rules. Ms. Perszyk explained the changes to the regulations that were made to incorporate the CCR extension rule and informed the Board that this regulatory amendment is exempt from the state administrative procedures for adoption of regulations that are not materially different from the federal requirements (§2.2-4006 A 4 c of the Code of Virginia).

Mr. Thomas Smith and Ms. Jennifer Boerder, both of Prince William County, provided public comment on this action. Mr. Smith, County Engineer, noted that under 40 CFR 257.102 there are closure options for these CCR impoundment facilities such as close in place or clean closure by removal. Mr. Smith asked the Board to add a new requirement to 9VAC20-81 requesting that CCR impoundments be required to perform and provide a risk assessment of the closure options prior to a closure option being chosen. Ms. Boerder also requested that the Board add a requirement to 9VAC20-81 to require that these facilities perform a risk assessment regarding the closure options and that this risk assessment information be shared. In response, Mr. Williams noted that the regulatory action before the Board was a final exempt action under the Administrative Process Act as it was a conforming change to incorporate the federal regulations. He informed the Board that adding new requirements not part of the federal rule would not meet the exemption criteria and, therefore, the commenters’ proposed revision could not be incorporated as part of this final exempt regulatory action.

Based on the Board book material, staff presentation and staff responses to questions, the Board, on a motion of Mr. Yob and seconded by Mr. Crate, voted to adopt this amendment to 9VAC20-81 as a final regulation by a vote of 6-0 with Mr. Benedetto abstaining. The Board authorized publication, and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

#### **Minute No. 4 - Significant Noncompliance Report.**

The Board received a report from Ms. Kristen Sadtler, the Waste Enforcement Program Manager, on the Hazardous Waste Significant Non-Compliers and Solid Waste Final Orders for Federal Fiscal Year (FFY) 2016 and for FFY 2017 from October 1, 2016 to February 24, 2017.

#### **Minute No. 5 - Public Forum.**

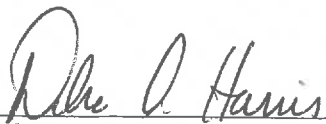
No one appeared during the public forum.

#### **Minute No. 6 – Division Director’s Report.**

The Board received the Division Director’s Report from Mr. Justin Williams, Land Protection and Revitalization Division Director.

**Minute No. 7 - Future Meetings.**

No future meetings were set for the Board at this meeting.



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Debra A. Harris  
Planning and Policy Specialist  
Office of Regulatory Affairs