

MINUTES

STATE AIR POLLUTION CONTROL BOARD MEETING

THURSDAY, NOVEMBER 16, 2017

CAPITOL BUILDING
HOUSE ROOM 1
STATE CAPITOL
RICHMOND, VIRGINIA 23219

Board Members Present:

Richard D. Langford, Chair
Nicole M. Rovner
William H. Ferguson
Roy A. Hoagland

Samuel A. Bleicher, Vice-Chair
Ignacia S. Moreno
Rebecca R. Rubin

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 12:12 p.m.

Minute No. 1 - Review and Approval of Agenda. The Board approved the agenda as distributed in the Board book.

Minute No. 2 - Minutes. The Board, on a motion by Ms. Rubin and seconded by Mr. Bleicher, unanimously approved the minutes of the Board's meeting on September 22, 2017.

Minute No. 3 - Federal Documents Incorporated by Reference (Rev. E17). Ms. Karen G. Sabasteanski with the Office of Regulatory Affairs presented final exempt amendments to the Regulations for the Control and Abatement of Air Pollution to incorporate newly promulgated federal New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), and national emission standards for hazardous air pollutants for source categories (Maximum Achievable Control Technology, or MACT). Ms. Sabasteanski informed the Board that the amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2017, but there were no new NSPS, NESHAP or MACT standards for incorporation in this action.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Hoagland and seconded by Mr. Bleicher, unanimously adopted the amendments with an effective date consistent with the Administrative Process Act (Act) 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 Act.

Approved Minute No. 2
Sept. 28, 2018

Minute No. 4 - Regulation for Emissions Trading (9VAC5 Chapter 140, Rev. C17). Mr. Michael Dowd, Air and Renewable Energy Division Director, presented proposed amendments to the Regulation for Emissions Trading. Mr. Dowd advised the Board that Executive Directive 11 (ED 11), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy," directs the Department, in coordination with the Secretary of Natural Resources, to take the following actions in accordance with the provisions and requirements of Virginia Code § 10.1-1300 et seq., and Virginia Code § 2.2-4000, et seq.:

1. Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit CO₂ from electric power facilities that:
 - a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of CO₂ allowances through a multi-state trading program; and
 - b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on CO₂ emissions imposed in other states with such limits.
2. By no later than December 31, 2017, present the proposed regulation to the State Air Pollution Control Board for consideration for approval for public comment in accordance with the Board's authority pursuant to Virginia Code § 10.1-1308.

Mr. Dowd advised the Board that the Department issued a notice of intended regulatory action that provided for receiving comment during a comment period and a summary and analysis of public input was included in the agency background document. In addition, to assist in the development of the proposal, the Department formed a regulatory advisory panel consisting of affected stakeholders and Department staff. Information gathered from experts in the field, its own analysis and input from the panel forms the basis for the Department recommendation. A copy of the panel report containing the recommendations of the panel was also provided to the Board.

Mr. Dowd then reviewed the following draft regulation amendments and responded to questions from the Board:

1. The primary purpose of the regulation is to implement a declining cap on carbon emissions. The administrative means of accomplishing this will be effected by linking Virginia to RGGI, an established emissions trading program. An allowance will be issued for each ton of carbon emitted by an electricity generating facility. The company must then decide if it will reduce carbon emissions and sell the resulting additional allowances, or if it will not reduce carbon emissions and make up the difference with purchased allowances. The proposal includes two options on the base budgets, 33 million tons and 34 million tons, which will determine, based on a 3% annual reduction, the annual budgets and allocations for future years.
2. The mechanism for determining the cost of allowances will be a consignment auction.
3. A cost containment reserve allowance will be offered for sale at an auction by the Department for containing the cost of CO₂ allowances in the event of higher than anticipated emission reduction costs. An emission containment reserve allowance will be withheld from sale at an auction by the Department for additional emission reduction in the event of lower than anticipated emission reduction costs.
4. Monitoring, recording, and recordkeeping requirements will be implemented to track compliance.
5. Conditional allowances will be allocated to the Department of Mines, Minerals and Energy (DMME) in order to assist the Department for the abatement and control of air pollution, specifically, CO₂.

Ms. Moreno moved, and Mr. Ferguson seconded, adoption of the staff recommendation to approve the proposal and authorize the Department to promulgate the proposal for public comment.

A motion by Mr. Bleicher and seconded by Mr. Hoagland to amend the proposal to strike 9VAC5-140-640 B that provided an exemption for certain sources failed on a vote of 3 (Bleicher, Rovner and Hoagland) to 4 (Langford, Ferguson, Rubin and Moreno). The Board requested that the Department include in the public comment announcement a specific request for comment on whether the exemption provided in 9VAC5-140-640 B should be retained or removed in any final regulation.

A motion by Mr. Bleicher and seconded by Mr. Hoagland to amend the proposal by revising 9VAC5-140-6190 C to continue reducing the number of allocations each year after 2030 was withdrawn after discussion. The Department will consider appropriate methods for addressing a review of the regulation prior to 2030 to determine whether to continue annual reductions in the number of allocations after 2030 for Board consideration when a final regulation is presented to the Board.


There being no further motions, the Board, based on the Board book material, staff presentation and Board discussion, the Board, unanimously, approved the proposal and authorized the Department to promulgate the proposal for public comment.

Minute No. 6 - High Priority Violations (HPV's) for the Third Quarter, 2017: The Board received a report from Ms. Kerri Nicholas, Division of Enforcement, on high priority violations for the fourth quarter of 2017.

Minute No. 7 - Division Director's Report - Executive Directive 11 Update - Regulatory Advisory Panel (RAP) Process: Mr. Michael Dowd, Air and Renewable Energy Division Director, presented a brief report on the 2017 ozone season.

Minute No. 9 - Public Forum: No one appeared during the public forum.

Minute No. 10 - Future Meetings: Dates for meetings in 2018 were not set.


Cindy M. Berndt