

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING

THURSDAY, SEPTEMBER 17, 2020

ELECTRONIC COMMUNICATION MEETING

Board Members Present:

Roy A. Hoagland, Chair
Richard D. Langford
Staci F. Rijal
Hope F. Cupit

Kajal B. Kapur, Vice-Chair
Gail Bush
Dr. Lornel G. Tompkins

Board Members Absent: None

Department of Environmental Quality:

David K. Paylor, Director
Debra A. Harris

Cindy M. Berndt

Attorney General's Office:

Gray O'Dwyer, Assistant Attorney General

These minutes summarize activities that took place at this Board meeting. The Board convened the meeting at 10:35 a.m. and adjourned the meeting at 1:10 p.m.

The Board convened the meeting electronically consistent with Governor Ralph Northam's Executive Order No. 51 (2020), Item 4-0.01 g of Chapter 1289 of the 2020 Acts of Assembly and the applicable provisions of § 2.2-3708.2 of the Freedom of Information Act. Further, the Board stated that a meeting was necessary for the Board to discharge its lawful purposes, duties, and responsibility; but impracticable or unsafe for the Board to assemble in a single location due to the declaration of a state of emergency for COVID-19.

Minute No. 1 - Review and Approval of Agenda - The Board, on a motion by Ms. Cupit and seconded by Ms. Kapur, unanimously approved the agenda as announced. (Vote was taken by roll call with all members voting aye.)

Minute No. 2 - June 18, 2020 Minutes - The Board, on a motion by Mr. Langford and seconded by Ms. Rijal, approved the minutes from the Board's meeting on June 18, 2020. (Vote was taken by roll call with all members voting aye.)

Minute No. 3 - Election of Officers - The Board, on a motion by Ms. Cupit and seconded by Ms. Rijal, unanimously elected Mr. Roy Hoagland to serve as Chair and Ms. Kajal Kapur to serve as Vice-Chair of the Board. (Vote was taken by roll call with all members voting aye.)

Minute No. 4 - Permits and Variances for Stationary Sources - Rev. E20 - Final Exempt Action - Ms. Karen Sabasteanski presented final exempt amendments to the Regulations for the Control and Abatement of Air Pollution and the Regulation for General Administration concerning locality particularly affected. Ms. Sabasteanski explained that Chapter 1110 of the 2020 Acts of Assembly amended § 10.1-1307.01 to add new

public participation requirements for permits and variances for (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas. The applicant must publish a notice at least 60 days prior to the close of the public comment period. The applicant must mail notice to local elected officials and the planning district commission; local public libraries and schools, and local property owners. Written comments must be accepted by the Board for at least 30 days after the public hearing.

Ms. Sabasteanski reviewed the following amendments to the regulations:

1. Add a definition of "locality particularly affected" where needed in order to be consistent with other new source review regulations and in order to implement the new requirements. [9VAC5-80-1110, 9VAC5-80-1410]
2. Add additional public notice and participation requirements for specific source types. Needed in order to implement the requirement of state law to address public participation for certain localities in greater detail. [9VAC5-80-1170, 9VAC5-80-1460, 9VAC5-80-1775, 9VAC5-80-2070, 9VAC5-170-140]

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Langford and seconded by Ms. Bush, unanimously (i) adopted the amendments with an effective date consistent with the Administrative Process Act and (ii) affirmed that it would receive, consider, and response to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act. (Vote was taken by roll call with all members voting aye.)

Minute No. 5 - Federal Documents Incorporated by Reference - Rev. F20 - Final Exempt Action: Ms. Karen Sabasteanski presented 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), Rules 5-5, 6-1, and 6-2, respectively, of the Board's regulations. Ms. Sabasteanski explained that the amendments are necessary for the Department to obtain authority from the U.S. Environmental Protection Agency (EPA) to enforce these standards. In addition, an outdated reference to a specific version of a federal code citation is being removed, and an internal reference to a federal standard in a regulation affecting a specific stationary source (landfills) is being updated.

Ms. Sabasteanski reviewed the following amendments to the regulations:

1. The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2020. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.
2. Subpart OOOOa (Crude Oil and Natural Gas Facilities for which Construction, Modification, or Reconstruction Commenced after September 18, 2015) and Subpart XXX (Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014) of 40 CFR Part 60 are being added to the list of new source performance standards adopted by reference in order that they be implemented by the state.
3. A specific version of an emissions guideline relative to Article 43.1 of 9VAC5-40, Emission Standards for Municipal Solid Waste Landfills for Which Construction, Reconstruction, or Modification Was

Commenced on or Before July 17, 2014, was adopted by reference at 9VAC5-20-21 in order to create a transition between the 2016 and 2017 federal code books. Subsequently, federal issues with respect to this standard have been resolved, and there is no longer a need to cite a previous version of the standard. Additionally, the federal guidelines were amended by adding a new subdivision (see 9VAC5-40-5970 B 3 with respect to 40 CFR 60.38f); the state regulation implementing the federal regulation by reference must now be updated.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Ms. Rijal and seconded by Ms. Kapur, unanimously (i) adopted the amendments with an effective date consistent with the Administrative Process Act and (ii) affirmed that it would receive, consider, and response to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act. (Vote was taken by roll call with all members voting aye.)

Minute No. 6 - Director's Report - The Board received updates from Mr. David Paylor on the budget, the environmental justice study and the Department's continued operations during the COVID-19 state of emergency.

Minute No. 7 - Division Director's Report - The Board received an update from Mr. Michael Dowd, Director of the Division of Air and Renewable Energy, on the U.S. Environmental Protection Agency's (EPA) periodic review of the national ambient air quality standard for ozone. Mr. Dowd also updated the Board on EPA's periodic review of the national ambient air quality standard for sulfur dioxide and the proposed nonattainment designation for a portion of Giles County.

Minute No. 8 - Public Engagement Committee Update - Mr. Roy Hoagland, reported to the Board .that the Committee met on July 20. He reviewed the following 10 key topics that the Committee had prioritized based on the public comments received:

1. Provide earlier public notice of pending permit action, including proactive education
2. Provide longer formal public comment period on pending permit
3. Alter outreach practices to ensure notice to, and engagement of, vulnerable communities, in particular environmental justice communities
4. Build more sustainable, relational community engagement
5. Alter framework parameters of solicited public comment on permits so that it is not limited to technical parameters
6. Increase access to Department staff to provide public with clearer understanding of the technical aspects of a proposed facility and associated permit
7. Provide the public with the opportunity to address the Board, not the Department, on all regulations and on a controversial permit de novo
8. Keep Attorney General's Office advice to the Board public whenever possible
9. Have the Board receive from DEQ notice of pending permit applications and provide the Board the opportunity to elevate a permit to the Board
10. Develop and provide the Board with an inventory map of Virginia's vulnerable environmental justice communities

The Board and Department discussed resources available to the Committee and the status of agency efforts and agreed to have further discussions.

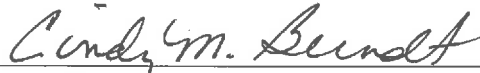
Mr. Hoagland advised the Board that the Committee's next meeting was scheduled for October 27, 2020.

Dr. Tompkins and Ms. Cupit were added to the Committee.

Minute No. 9 - High Priority Violations Report - The Board received a report on high priority violations for the third quarter of 2020.

Minute No. 10 - Public Forum - The Board received comment from Mary Finley-Brook and Freeda Cathcart. Ms. Finley-Brook expressed concerns with Department transparency, consideration of site suitability and protection of vulnerable populations. Ms. Cathcart suggested that the Board have additional committees, including a legislative and regulatory committee.

Minute No. 11 - Future Meetings - The Board confirmed December 3, 2020, as the date of their next regular meeting and October 27, 2020, as the date of the next Public Engagement Committee.



Cindy M. Berndt

*Approved by Minute No. 2
on December 3, 2020*