

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
SITE SUITABILITY (REV. G20)**

**REGULATORY ADVISORY PANEL MEETING MINUTES**

**PIEDMONT REGIONAL OFFICE TRAINING ROOM  
4949-A COX ROAD, GLEN ALLEN, VIRGINIA  
OCTOBER 12, 2021**

**Members Present:**

Gustavo Angeles, Sierra Club	Stephen Moret, VEDP
Lisa Kardell, Waste Mgmt	Greg Buppert for Mark Sabath, SELC
Cathy Binder, King George County	Patrick Fanning, CBF
Dru Branche, Newport News Shipbuilding	Krupal Shah, VCCA
Steve Fischbach, VPLC	Kyle Shreve, VA Agribusiness Council
Michelle Gowdy, Virginia Municipal League	Mitchell Smiley, VA Municipal League
Jim Guy, Mecklenberg Electric Cooperative	Andrea W. Wortzel, Troutman-Pepper

**Members Absent:**

Eric Gates, Celanese	S.Z. Ritter, City of Chesapeake
Leigh Mitchell, Upper Mattaponi Tribe	Randy Wingfield, Town of Christiansburg

**Department of Environmental Quality:**

Michael G. Dowd, Air Division	Tamera M. Thompson, Air Division
Renee Hoyos, Environmental Justice	Karen Sabasteanski, Air Division

**Facilitators:**

James Burke, VCU	Linda Pierce, VCU
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The meeting began at approximately 9:35 a.m..

**Meeting Purpose:** This regulatory advisory panel (RAP) has been established to advise and assist the department in the development of proposed amendments to provisions of board's regulations to provide greater detail as to how the site suitability requirements of Code of Virginia § 10.1-1307 E are to be met. The purpose of this meeting is for DEQ to coordinate and facilitate discussions of this group in an effort to find common ground and elements that could be included in the regulation amendments.

**Welcome and Introductions:** Ms. Sabasteanski welcomed the group and introduced Dr. Burke and Ms. Pierce of VCU's Performance Management Group, who are assisting with the process. Ms. Sabasteanski then posted the agenda, and reminded the group to follow Freedom of Information Act (FOIA) requirements. (See Attachment A.) A member who had not attended the previous meeting was introduced.

**Staff Presentations:** Ms. Hoyos, DEQ's Director of Environmental Justice, provided an overview of her division's current and future activities (see Attachment B), including statewide activities and department-level actions such as the creation of a Virginia EJScreen tool and EJ Academy. Ms. Thompson, DEQ's Manager of the Office of Air Permit Programs, provided an overview of air permitting requirements and regulations (see Attachment C), including types of permits, and the pollutants and facilities which are subject to them.

**Group Discussion:** The group discussed a number of topics. The following reflects the general course of conversation, as there was no polling or voting, and no formal consensus or agreement was sought. Rather, individual members of the RAP raised issues, including the following:

1. How to determine what is considered to be a disproportionate impact given currently available tools (EJ Screen, modeling) in the context of meeting the NAAQS and protecting public health as needed beyond the NAAQS.

2. Is it possible to consider health consequences the same way as air quality consequences, for example, can health effects be looked at from both a general and specific standpoints. One potential means could be through the current EPA review of the particulate matter NAAQS; there is a lot of relevant health data for this pollutant. If this type of health assessment is beyond DEQ's capabilities, what other state agencies should be responsible? Note that the evaluation of short-term emissions in addition to annual emissions may at least partially address acute impacts.

3. Site suitability ought to be considered in the context of public participation guidelines (PPGs), which were recently out for periodic review. Perhaps changes to the PPGs will inform some of the public outreach issues that have been identified.

4. How to work with localities that are actively seeking economic development projects--what stage to involve DEQ, and what can DEQ do to help, i.e., at what point is it too early or too late for DEQ to step in?

5. A list of elements identified for board consideration via public comment at the NOIRA stage by the Virginia Environmental Justice Collaborative was circulated (see Attachment D).

6. Potential revisions to the site suitability requirements of 9VAC5-170-170 were provided (see Attachment E) as a starting point as well as a proposed site suitability process outline (see Attachment F). Concern was expressed as to how such changes (and those identified elsewhere in this list) would affect smaller localities with fewer resources, as well as the necessity for clarity and certainty--could the board's 1987 policy (see the minutes for the first meeting) be considered as a starting point for creating a checklist for communities and local governments?

7. The regulation may identify the general need for a determination (who) and the specifics may then be identified in guidance (what), which is a more flexible process than a full rulemaking.

8. There may be a need for public comment on a preliminary determination that a site is suitable in order that any communities missed in the first round can come forward, or if any concerns with the first determination are identified.

9. The issue of whether the requirements should apply to new facilities or to new and modified facilities was discussed further. An expansion that would result in an increase in air pollution may need to be subject to the site suitability review process, however, some modifications are needed to modernize and improve emissions control.

Finally, some members expressed an interest in the group continuing to meet in order to continue the discussion and perhaps develop some recommendations for specific regulatory provisions.

**Next Steps/Future Meetings:** Dr. Burke and Ms. Pierce wrapped up the meeting. The meeting adjourned at approximately 12:00 p.m.

**Future Meetings:** The group determined that the additional meeting scheduled for October 14, 2021, should be held.

Attachments

REG\DEV\G20-RP03-MINUTES



**VCU**

Performance Management Group

L. Douglas Wilder School of Government and Public Affairs

ATTACHMENT A

# Site Suitability for Air Quality

Regulation Revision G20

Regulatory Advisory Panel (RAP)

Third Meeting, October 12, 2021

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# Site Suitability for Air Quality Permitting RAP Meeting Agenda

Tuesday, October 12, 2021

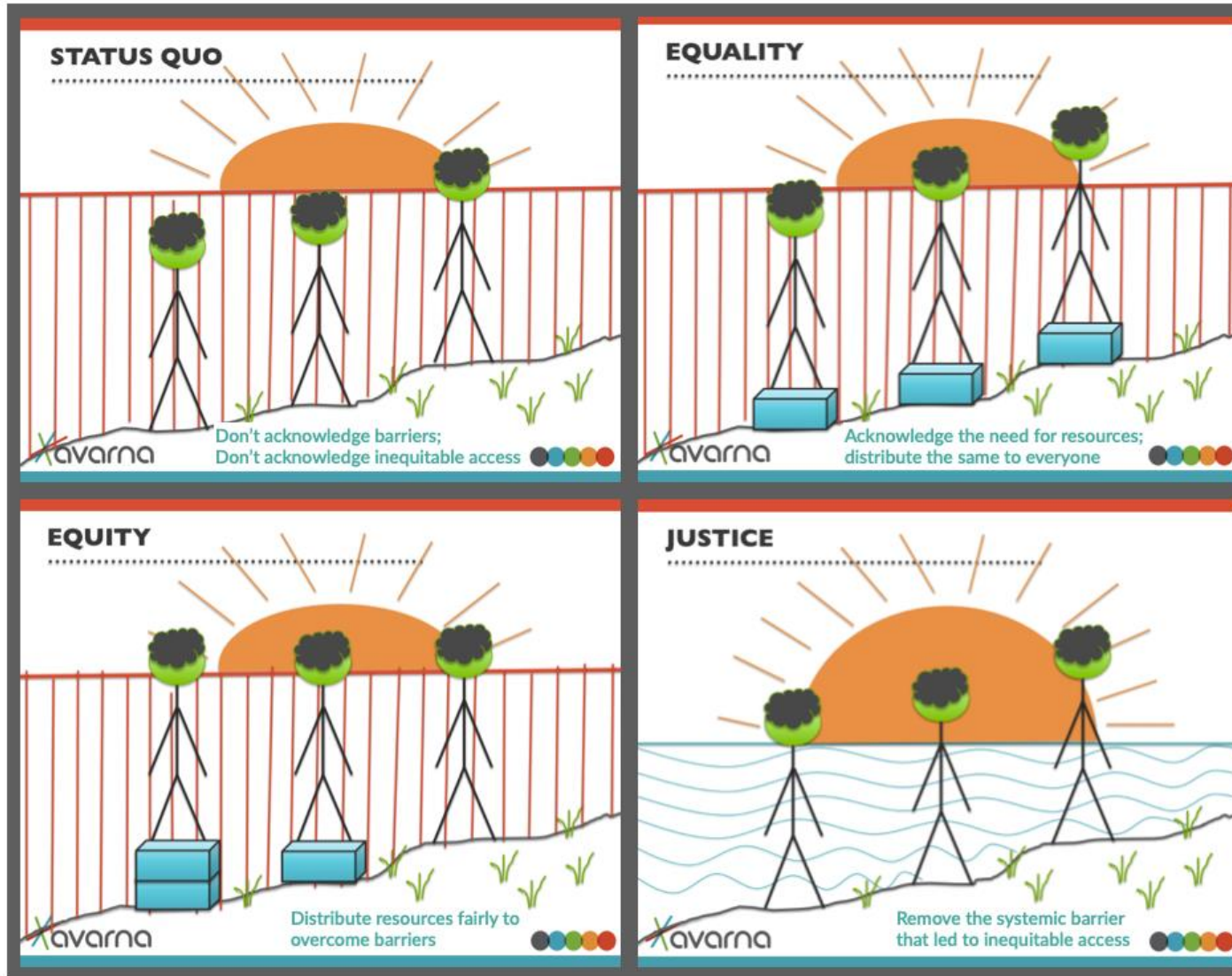
<b>9:30 – 9:35</b>	Welcome and Introductions
<b>9:35 – 9:45</b>	Renee Hoyos, DEQ, EJ
<b>9:45 – 10:00</b>	Tamera Thompson, DEQ, Permitting
<b>10:00 – 11:55</b>	Group Discussion
<b>11:55</b>	Next Steps
<b>12:00</b>	Adjourn



# Environmental Justice at the Virginia Department of Environmental Quality

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Renee Hoyos  
Director of Environmental Justice  
Virginia Department of Environmental Quality  
August 2021



Do we care enough to change?

# Commonwealth of Virginia

- Environmental Justice Act of 2020.
- Chief Officer of Diversity, Equity, and Inclusion – Dr. Janice Underwood.
- Interagency Environmental Justice Working Group – comprised of four secretariats, 18 departments and two environmental Groups.
- Virginia Environmental Justice Council representing 21 organizations.
- DEQ has updated its mission and policy statement to include EJ principles.



# DEQ

- DEQ solicited a study to determine how we can improve environmental justice in our department. ([Skeo Report](#))
- There were nine recommendation categories:
  - Authority
  - Leadership
  - Staff Capacity
  - Guidance and Tools
  - Accessible Information
  - Relationship Building
  - Community Engagement
  - Environmental Justice Community Capacity
  - Local Government Coordination

## DEQ (cont.)

- Created an Office of Environmental Justice and provided resources.
- Strategic Plan with an EJ and climate change lens.
- EPA grant to create a Virginia EJScreen tool and EJ Academy.

# Questions?

Renee Hoyos

[Renee.Hoyos@DEQ.Virginia.gov](mailto:Renee.Hoyos@DEQ.Virginia.gov)

804-698-4291



# Air Permitting Overview

## Site Suitability RAP

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Tamera Thompson  
Manager, Office of Air Permit Programs  
Virginia Department of Environmental Quality  
October 12, 2021

## Type of Air Permits – 9VAC5 Chapter 80

- Title IV/V – Articles 1 and 3
- State Operating Permits – Article 5
- **Minor New Source Review (NSR) –  
Article 6**
- Major Hazardous Air Pollutant (HAP) NSR – Article 7
- Major NSR – Prevention of Significant Deterioration (PSD) –  
Article 8
- Major NSR – Nonattainment – Article 9

# Construction Permits

- PRE-Construction
  - Allow for Construction AND Operation
- Do NOT Expire
- Major New Source Review (NSR)
  - Prevention of Significant Deterioration (PSD) – Article 8
  - Non-Attainment NSR – Article 9
  - Case-by-Case MACT – Article 7
- Minor NSR – Article 6

# Operating Permits

- Title V – Articles 1 and 3
- Title IV (Acid Rain) – Article 3
- State Operating Permit (SOP) – Article 5
  - Not a “State” Title V

## By the Numbers

- DEQ Processes  $\approx$  350 – 400 Permit Actions a Year
- DEQ Issues Approximately 20 - 30 Exemptions a Year
- **Minor NSR Permits in FY2021 - 234**
- $\approx$  275 – 300 Regulations
- 50 Permit Writers, 6 Permit Managers, 8 Office of Air Permit Program Staff
- Current Vacancies – 17 Permit Writers (34%), 3 CO Staff



# Pollutants Covered By Permits

- Criteria Pollutants
  - Nitrogen Oxides (NO<sub>x</sub>)      Sulfur Dioxide (SO<sub>2</sub>)
  - Carbon Monoxide (CO)      Volatile Organic Compounds (VOC)
  - Particulate Matter (PM)      Lead (Pb)
    - PM<sub>10</sub> – Particulate Matter 10 micrometers or less
    - PM<sub>2.5</sub> – Particulate Matter 2.5 micrometers or less
- Hazardous Air Pollutants (HAPs) – 187 Pollutants
- Greenhouse Gases under PSD

# Prevention of Significant Deterioration (PSD) Major NSR – Article 8

- Applies to Major Sources
  - 250 tpy of Regulated NSR Pollutants
  - 100 tpy if on the List of 28 Source Categories
- In Areas Meeting National Ambient Air Quality Standards (NAAQS)
- Requires Coordination with the Federal Land Managers
- Requires Applicant Briefing to Public – 30 days after Initial Letter of Determination
- Requires Air Quality Analysis (Modeling)
- Requires Best Available Control Technology (BACT)

## Prevention of Significant Deterioration (PSD) Major NSR – Article 8

- Requires Monitoring, Recordkeeping and Recording to Assure Limits are Being Met
- 30 Day Public Comment Period
- Public Hearing
- 15 Day Public Comment Period After Hearing
- DEQ Prepares Draft to Comment Documents
- Makes Appropriate Changes Based on Comments
- Agency Issues Permit OR Air Board Issues Permit if Certain Criteria are Met (i.e., 25 signatures requesting Board consideration, Director elevates to Board)

## Non-attainment NSR – Article 9

- Areas That Are NOT Meeting the National Ambient Air Quality Standard for a Particular Pollutant (9VAC5-20-204)
- Non-attainment Permit for Pollutant for Which the Area is in Non-attainment
  - 2015 8-Hour Ozone Standard (70ppb)
    - NO<sub>x</sub>
    - VOC
- One Non-attainment Area in Virginia – Northern Virginia
  - Arlington, Fairfax, Loudoun, & Stafford Counties
  - Cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park

## Non-attainment NSR – Article 9

- Lower Emission Thresholds (100 tpy NO<sub>x</sub>, 50 tpy VOC)
- Lowest Achievable Emission Rate (LAER)
- Appropriate Monitoring, Recordkeeping and Reporting
- Same public comment process as PSD
- Virginia has issued 1 Nonattainment permit in 15 years

# Minor New Source Review (NSR)

- Construction Permits for Non Major NSR
  - Clean Air Act Requires States to Address non-major activities in some way
  - VA Minor NSR Requires State Best Available Control Technology (BACT)
- General Permits
  - Option – Can always get regular permit
  - Difficult – Regulatory Process Cumbersome

## Minor NSR

- Emission Thresholds Determine if a Permit is Needed
- Category Exemptions (i.e., engines or tanks under a specified threshold)
- Permit for a Greenfield Source or a New Project
- Greenfield Requires Local Government Certification
- Applicability Based on Uncontrolled Emissions
- Best Available Control Technology (BACT)
- Facility Must be in Compliance with All Air Quality Standards (National Ambient Air Quality Standards (NAAQS) & Air Toxics Standards)

# Minor NSR

- Public Comment Period Triggered
  - Whether the new stationary source or project is opposed by any person
  - Whether the new stationary source or project has resulted in adverse media
  - Whether the new stationary source or project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency
  - Whether the new stationary source or project has generated adverse comment by a local official, governing body, or advisory board.



# Minor NSR

- If Public Comment is Triggered
  - Minimum 30 day Public Comment
  - Public Hearing in Locality
- Response to Comments Document Prepared
- Permit Issued by DEQ – May be Elevated to Air Board Under Certain Circumstances (i.e., 25 requests for Board Consideration, Agency Director)
- Common Sources Covered by Minor NSR
  - Emergency Engines, Small Coating Operations, Concrete Batch Plants, etc.
- DEQ issues approximately 230 – 250 Minor NSR permits per year

## Minor NSR – State Major

- Permits for Sources with Emissions Greater than 100 tpy but Do Not Trigger PSD
- Source has to Notify Public Within 15 Days of Receive the Initial Letter of Determination from Agency
- Requires Air Quality Analysis (Modeling)
- Requires 30 Day Public Comment Period
- Requires Public Hearing
- Requires 15 Day Comment Period after Hearing
- Permit Issued By Agency but Can Be Elevated to Air Board

# Title V – Article 1

- Purpose – To Put All Federal Requirements into One Permit
  - Including NSPS/NESHAPs/MACTs and requirements from active NSR permit(s)
  - Source's choice to add State-only requirements
  - Add monitoring in certain circumstances
    - Periodic
    - Compliance Assurance Monitoring (CAM)
  - Does NOT create new requirements
- 5 Year Permit Term – Only Permits that Expire

## Who Gets a TV Permit? (9VAC5-80-50)

- Facilities of a Certain Size or Subject to Federal Requirements
  - “Major Sources” (9VAC5-80-60/9VAC5-80-370)
    - Regulated NSR Pollutants Potential to Emit (PTE) > 100 tpy
    - Hazardous Air Pollutants (HAPs) > 10 tpy Single HAP or >25 tpy Total HAPs
  - Non-Major Sources (aka Title V By Rule)
    - Subject to NSPS or MACT
    - Can be deferred by rule
    - Can be exempted from Title V by EPA
- Currently Between 225 – 240 Title V Sources in VA

# State Operating Permits (SOP) – Article 5

- All Sources Are Eligible for SOPs
- Used to Limit Sources Potential to Emit
- Used by Air Board for Site Specific Emission Standard – Correct a NAAQS Violation
- NOT a State Title V
- Does Not Expire
- Requires Public Comment Period

# Questions??



proposed project is “woefully inadequate.”<sup>26</sup> The Court also makes plain that relying on a locality’s special use permit is not “a substitute for an independent determination of site suitability under section 10.1–1307(E)” and that “blindly relying on ambient air standards is not a sufficiently searching analysis of air quality standards for an EJ community.”<sup>27</sup>

**B. Make independent findings regarding each of the four siting criteria of § 10.1-1307 E**

As stated above, Va. Code § 10.1-1307 E sets forth *four* distinct siting criteria that the Board must address when “making regulations and in approving variances, control programs, or permits . . . .” Below we set out elements that should be included in the regulations to ensure the Board has sufficient information to make independent<sup>28</sup> findings that support a determination of “the reasonableness of the activity involved and the regulations proposed to control it,” by using the four siting criteria set forth in Va. Code § 10.1-1307 E.

1. **Require the permit applicant to provide detailed information** to the Board that addresses the four discrete elements the Board must consider when issuing permits. This information should include:
  - Demographic data (e.g., race, national origin, poverty status, disability status) of those living in close proximity to the proposed activity;
  - Health data such as the incidence of diseases related to air pollution (e.g., asthma, chronic obstructive pulmonary disease, chronic bronchitis, pneumonia and heart disease)<sup>29</sup> experienced by demographic groups that reside in close proximity to the proposed activity;
  - Health effects of air toxics anticipated to be released by the proposed activity;
  - Maps showing the location of sensitive land uses in close proximity to the proposed activity such as schools, playgrounds, housing used by populations more vulnerable to the harmful effects of air toxics, etc.
  - Maps showing the location of natural features in close proximity to the proposed facility such as wetlands and floodplains, habitat for endangered species or other important wildlife, earthquake faults, etc.

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<sup>26</sup> *Buckingham, 947 F.3 at 92-93.*

<sup>27</sup> *Buckingham, 947 F.3 at 93.*

<sup>28</sup> “We remind the Board of its obligation to make independent findings and not rely on the findings of local zoning officials. ‘ . . . [I]t is improper to rely upon a SUP as a substitute for an independent determination of site suitability under section 10.1–1307(E). See 9 Va. Admin. Code § 5-80-1230 “[C]ompliance [with zoning ordinances] does not relieve the board of its duty under . . . § 10.1-1307[ (JE) ] . . . to independently consider relevant facts and circumstances.” *Buckingham, 947 F.3 at 93.*

<sup>29</sup> *Buckingham, 947 F.3 at 86.*



- Maps showing the location of major and minor sources of air pollution in close proximity to the proposed facility;
  - Maps showing the plumes where air toxics discharged by the proposed activity are likely to travel;
  - The number of jobs projected by the proposed activity and plans for recruiting applicants who live in close proximity to the proposed facility;
  - The economic benefits that will accrue to the host community by the proposed activity; and
  - The proposed air pollution controls that the applicant intends to use, the cost of installing those controls, and any more stringent controls that the applicant considered and rejected.
2. **Make the information provided by the applicant available to the public** by posting it on the Board's (or DEQ's) website and providing copies to local public libraries near the proposed activity.
  3. **Establish a public comment period** of at least 45 days on the materials submitted by the applicant and, if necessary, hold a public hearing in the host community of the proposed activity in the evening or on a weekend to adduce additional comments on those materials. If a public hearing is scheduled, require the applicant to produce a fact sheet that summarizes the proposed activity (up to 2 pages in length) in English and at least one foreign language widely used by persons living in close proximity to the proposed activity.
  4. **Make findings of fact** for each of the four siting criteria set forth in Va. Code § 10.1-1307 E when making decisions under this Code provision, based on the information supplied by the applicant and the comments received during the comment period and/or public hearing.
  5. **Explain in writing how the Board weighed the four siting criteria** set forth in Va. Code § 10.1-1307 E when issuing decisions under this Code provision. Further, the regulation should clarify that no single criteria will always prevail over the remaining three criteria.<sup>30</sup>

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<sup>30</sup> See, *Posey v. Commonwealth*, 123 Va. 551, 553, 96 S.E. 771, 771 (1918) (“It is one of the fundamental rules of construction of statutes that the intention of the Legislature is to be gathered from a view of the whole and every part of the statute taken and compared together, giving to every word and every part of the statute, if possible, its due effect and meaning, and to the words used their ordinary and popular meaning, unless it plainly appears that they were used in some other sense. If the intention of the Legislature can be thus discovered, it is not permissible to add to or subtract from the words used in the statute.”) (internal citations omitted).



Strawman of Possible Revisions to Site Suitability Regulation  
9 VAC 5-170-170

Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board, in making regulations and in approving variances, control programs, or permits, shall ~~consider facts and circumstances relevant to the~~ assess the reasonableness of the activity involved and the regulations proposed to control it ~~by considering, including:~~

1. The character and degree of injury to, or interference with safety, health, or the reasonable use of property which is caused or threatened to be caused:
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and \_
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from the activity. \_

For purposes of air permits issued for new facilities locating in greenfield sites, the Board's consideration shall include a review of the following facts and information to be provided by DEQ:

a. The character of the local population that may be affected and whether that local population includes an environmental justice community as defined in Va. Code § 2.2-234. [Determining the local population that may be affected shall be based on environmental justice mapping tools available; information regarding predominant wind directions and other relevant weather patterns that affect how air emissions from the facility are dispersed; and information from the host locality regarding the community. For a minor new source review permit, the local population to be assessed is the population within a one mile radius of the project; for a major permit, the local population to be assessed is the population within a three mile radius.]

b. A summary of the applicable air emission standards that apply, and any additional emission minimization measures included in the permit.

For purposes of air permits issued for new facilities locating in greenfield sites, the Board's consideration shall include a review of the following facts and information to be provided by the applicant:

a. An assessment about whether any environmental justice community identified by DEQ would face a disproportionate adverse impact, which shall be determined from a health risk assessment. If the applicant is a

small business and conducting such an assessment creates a financial hardship, the assessment will be conducted by DEQ.

b. Potential economic benefit of the project, including number of jobs created and revenue generated for the community.

c. Mitigation measures proposed for the project.

For purposes of air permits issued for new facilities locating in greenfield sites, the Board's consideration shall include a review of the following facts and information to be provided by the locality in which the facility will be located:

a. Revenue to the locality expected to be generated by the project.

b. Other benefits to the community associated with the facility, such as infrastructure improvements.

c. Local zoning approvals.

d. The extent of public participation during the local zoning process.

## Proposed Site Suitability Process

Developer submits pre-application work plan describing the approach for engaging the public in the development of the application. (This assumes DEQ/Air Board issues some kind of guidance about what should be in a work plan).

Short comment period & DEQ approves the plan, making adjustments based on public comment received

Developer engages the public according to the plan.

Developer submits application in compliance with its work plan. Application must contain sufficient info on 4 SS elements. (See pages 8-9 of VEJC's NOIRA comments, see below)

1. **Require the permit applicant to provide detailed information** to the Board that addresses the four discrete elements the Board must consider when issuing permits. This information should include:
  - Demographic data (e.g., race, national origin, poverty status, disability status) of those living in close proximity to the proposed activity;
  - Health data such as the incidence of diseases related to air pollution (e.g., asthma, chronic obstructive pulmonary disease, chronic bronchitis, pneumonia and heart disease)<sup>29</sup> experienced by demographic groups that reside in close proximity to the proposed activity;
  - Health effects of air toxics anticipated to be released by the proposed activity;
  - Maps showing the location of sensitive land uses in close proximity to the proposed activity such as schools, playgrounds, housing used by populations more vulnerable to the harmful effects of air toxics, etc.
  - Maps showing the location of natural features in close proximity to the proposed facility such as wetlands and floodplains, habitat for endangered species or other important wildlife, earthquake faults, etc.

- Maps showing the location of major and minor sources of air pollution in close proximity to the proposed facility;
  - Maps showing the plumes where air toxics discharged by the proposed activity are likely to travel;
  - The number of jobs projected by the proposed activity and plans for recruiting applicants who live in close proximity to the proposed facility;
  - The economic benefits that will accrue to the host community by the proposed activity; and
  - The proposed air pollution controls that the applicant intends to use, the cost of installing those controls, and any more stringent controls that the applicant considered and rejected.
2. **Make the information provided by the applicant available to the public** by posting it on the Board's (or DEQ's) website and providing copies to local public libraries near the proposed activity.
  3. **Establish a public comment period** of at least 45 days on the materials submitted by the applicant and, if necessary, hold a public hearing in the host community of the proposed activity in the evening or on a weekend to adduce additional comments on those materials. If a public hearing is scheduled, require the applicant to produce a fact sheet that summarizes the proposed activity (up to 2 pages in length) in English and at least one foreign language widely used by persons living in close proximity to the proposed activity.
  4. **Make findings of fact** for each of the four siting criteria set forth in Va. Code § 10.1-1307 E when making decisions under this Code provision, based on the information supplied by the applicant

and the comments received during the comment period and/or public hearing.

5. **Explain in writing how the Board weighed the four siting criteria** set forth in Va. Code § 10.1-1307 E when issuing decisions under this Code provision. Further, the regulation should clarify that no single criteria will always prevail over the remaining three criteria.<sup>30</sup>

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DEQ determines application is complete & sends notice of public comment & way to request public hearing (there should be various ways of giving notice: publication in newspaper (including foreign language newspapers), DEQ website, DEQ/Air Board social media accounts, )

Public comment & public hearing if requested occur

Board can approve, deny, or require applicant to submit further info.