

## MINUTES

### STATE AIR POLLUTION CONTROL BOARD MEETING

THURSDAY, SEPTEMBER 21, 2017  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
629 EAST MAIN STREET  
RICHMOND, VIRGINIA

**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

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These minutes summarize activities that took place at this Board Meeting. The meeting convened at 9:30 a.m., recessed at 11:14 a.m., reconvened at 11:24 a.m., recessed at 1:13 p.m., reconvened at 1:28 p.m. and adjourned at 2:45 p.m.

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**Minute No. 1 - Review and Approval of Agenda:** The Board approved the agenda with one modification; the Division Director's Report was moved up on the agenda after the fast-track regulation.

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

**Minute No. 3 - Title V Program Fees (9VAC5 Chapter 80, Rev. K16) - Public Participation Report and Request for Board Action:** Mr. Gary Graham presented amendments to the Regulations for the Control and Abatement of Air Pollution concerning Title V Program Fees. Mr. Graham explained that Title V of the federal Clean Air Act requires that Title V permit programs be fully funded through Title V program fees and that in Virginia 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 advised the Board that the purpose of the amendments before the Board is to (i) increase Title V fees so that they continue to fully fund the Title V permit program, and (ii) 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 informed the Board that to solicit comment from the public on the proposed regulation amendments, the Department issued a notice that provided for receiving comment during a comment period and at a public hearing. No comments were received during the public comment period.

Mr. Graham also briefly reviewed the following substantive amendments originally proposed for public comment:

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.

He advised the Board that no substantive changes to the original proposal were being recommended; only recommending a correction to the applicability date instructions to the Registrar in Chapter 80, Article 10 to be consistent with other applicability date instructions in that article.

The Board, based on the Board book material, staff presentation and Board discussions, unanimously, on a motion by Ms. Rovner and seconded by Ms. Rubin, adopted the amendments with an effective date as provided in the Administrative Process Act.

**Minute No. 4 - NO<sub>x</sub> Budget Program (Part I of 9VAC5-140, Rev. B17) - Request for Board Action on Exempt Final Regulation:** Ms. Mary Major presented amendments to the Regulation for Emissions Trading Programs to remove unnecessary federal requirements while retaining those requirements needed to control emissions from non-EGUs and ensure that Virginia is properly meeting federal requirements for the control of NO<sub>x</sub>. Ms. Major informed the Board that the transport of nitrogen oxides (NO<sub>x</sub>) across state lines, which contributes to the formation of ozone, was first addressed by EPA's NO<sub>x</sub> Budget Trading Program as implemented via the NO<sub>x</sub> State Implementation Plan (SIP) Call. This program controlled NO<sub>x</sub> emissions primarily from electric generating units (EGUs) as well as certain types of non-EGUs. In turn, the State Air Pollution Control Board implemented these federal requirements under its own NO<sub>x</sub> SIP Call Rule (Part I of 9VAC5-140). Subsequently, EPA's NO<sub>x</sub> SIP Call Rule was superseded by the Clean Air Interstate Rule (CAIR), which was in turn superseded by the Cross-State Air Pollution Rule (CSAPR). Although the state is now subject to CSAPR, and both the NO<sub>x</sub> SIP Call Rule (with respect to EGUs) and CAIR are no longer in effect, non-EGUs cannot be brought into the Transport Rule trading programs, and the NO<sub>x</sub> SIP Call regulations applicable to non-EGUs must be retained.

Ms. Major advised the Board that Part I of the Regulation for Emissions Trading (9VAC5-140) is amended to remove trading provisions that have been superseded by the CSAPR program for EGUs and that are not applicable to non-EGUs.

Based on the Board book material, staff presentation and Board discussion, the Board, unanimously, on a motion by Mr. Ferguson and seconded by Mr. Bleicher, 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.

**Minute No. 5 - Fast-track Amendments to the Public Participation Guidelines (9VAC5-5 et seq., Rev. D17):** Ms. Melissa Porterfield presented amendments to the Public Participation Guidelines (9VAC5-5 et seq.). Ms. Porterfield explained that the current regulations are based on model Public Participation Guidelines (PPGs) developed by the Virginia Department of Planning and Budget (DPB). As a result of a recent periodic review, staff determined that the model PPGs had been revised by DPB in response to Chapter 795 of the 2012 Acts of Assembly that revised § 2.2-4007.02 B of the Code of Virginia to allow interested parties the right to be accompanied by or represented by counsel during the formulation of a regulation.

Ms. Porterfield advised that staff was recommending that the Board use a fast-track regulatory process for this regulatory amendment since the revisions to this regulation are not expected to be controversial.

Based on the Board book material, staff presentation and Board discussion, the Board unanimously, on a motion by Mr. Hoagland and seconded by Ms. Rubin, authorized the department to:

1. Promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial with the understanding that the board's authorization constituted its adoption of the amendments to the Public Participation Guidelines (9VAC5-5) at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

**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 third 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, briefed the Board on Executive Directive 11. The report included an overview; discussion of the first RAP meeting including presentations from Franz Litz on the Regional Greenhouse Gas Initiative (RGGI) and Tom Ballou on Virginia Power Sector Profile and Trends; the webinars including a presentation by Franz Litz on Allocating Allowances in an Emissions Trading Program and a presentation by Dallas Burtraw on An Allowance Consignment Auction - How Does It Work; discussion of the second RAP meeting including Tom Ballou's presentation on Allowance Allocation Scenarios; discussion of the third meeting of the RAP including presentations from Tom Ballou on approaches to be considered when determining the stringency of the starting point and updates on modeling activities and upcoming modeling webinar; and a closing discussion of the path forward and conclusion.

**Minute No. 8 - Petition for Rulemaking, Carbon Dioxide Emissions - Public Participation Report and Request for Board Action:** Ms. Karen Sabasteanski presented the public comment summary and response to comments on a petition from Susan V. Coleman to initiate a rulemaking concerning carbon dioxide (CO<sub>2</sub>) emissions. The petitioner has requested that the board adopt regulations to simultaneously promulgate both an emergency rulemaking and a formal rulemaking to limit and reduce total CO<sub>2</sub> pollution in the Commonwealth by 30% by 2030, from its largest source, electric generating units.

Ms. Sabasteanski advised the Board that Governor McAuliffe issued Executive Order 57 (EO 57) on June 28, 2016. Under EO 57, he directed the Secretary of Natural Resources to convene a work group to study and recommend methods to reduce CO<sub>2</sub> emissions from electric power facilities and grow the clean energy economy within existing state authority. The group consisted of the Secretary of Natural Resources, the Secretary of Commerce and Trade, the Director of DEQ, the Director of the Virginia Department of Mines, Minerals and Energy, and the Deputy Attorney General for Commerce, Environment, and Technology.

The group facilitated extensive stakeholder engagement over the last year, including 6 monthly meetings that began on August 31, 2016 and ended on February 28, 2017. Each public meeting lasted between two and three hours, and the meetings consisted of presentations from members of the public. The presentations were voluntary, and all members of the public were invited to send suggested topics and present information to the Secretary of Natural Resources' office. In total, the Work Group received over 40 presentations. In addition to the public meetings, the group also facilitated a 3-month public comment period from February 1 to April 30, 2017. In total, the group received over 8,000 written comments.

The Work Group compiled its recommendations and submitted a final report to the Governor on May 12, 2017. The first recommendation of the "Report and Final Recommendations to the Governor" was that the Governor consider taking action via a regulatory process to establish a "trading-ready" carbon emissions reduction program for fossil fuel-fired electric generating facilities that will enable participation in a broader, multi-state carbon market.

Subsequently, Governor McAuliffe issued Executive Directive 11 (ED 11), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy" on May 16, 2017. ED 11 directs the Director of DEQ, 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 CO<sub>2</sub> 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 CO<sub>2</sub> allowances through a multi-state trading program; and
  - b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on CO<sub>2</sub> 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.

In order to meet the Governor's directive in a manner that affords the public the maximum opportunity for participation, the department has initiated a regulatory development process in accordance with the Administrative Process Act (APA) that will meet the Governor's stated deadline of December 2017. As part of this process, DEQ established and convened a regulatory advisory panel (RAP) representing interests from a cross-section of stakeholders to solicit input and provide assistance to the department in the development of proposed regulations. Once the RAP has completed its work, and a proposal is available for public comment, a clearer picture of the best path forward will emerge and inform the details of any final decisions.

Based on the Board book material, staff presentation, Board discussion and the conclusion that granting the petition would conflict with ED 11 and public process, developing an effective carbon reduction plan is important and complex, granting the petition would foreclose consideration of all other potentially more effective approaches, and the RAP panel and full public process in the ED 11 context will consider all options to determine the best approach, the Board, on a motion by Mr. Hoagland and seconded by Mr. Ferguson, denied the petition.

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

**Minute No. 10 - Future Meetings:** The Board confirmed November 16, 2017, as the date of the next meeting.

  
Cindy M. Berndt

*Approved Minute No. 2  
November 16, 2017*