

MINUTES

STATE AIR POLLUTION CONTROL BOARD MEETING

MONDAY, OCTOBER 29, 2018

POCAHONTAS BUILDING
HOUSE COMMITTEE ROOM
RICHMOND, VIRGINIA 23219

Board Members Present:

Richard D. Langford, Chair
William H. Ferguson
Nicole M. Rovner
Ignacia S. Moreno

Samuel A. Bleicher
Roy A. Hoagland
Rebecca R. Rubin

Department of Environmental Quality:

David K. Paylor, Director
Cindy M. Berndt, Office of Regulatory Affairs Director
Debra A. Harris, Policy & Planning Specialist

Attorney General's Office:

Matthew L. Gooch, Assistant Attorney General

These minutes summarize activities that took place at this Board Meeting. The meeting was convened at 10:00 a.m., recessed at 12:14 p.m., reconvened at 12:30 p.m. and adjourned at 12:45 p.m.

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

Minute No. 2 - Federal Documents Incorporated by Reference (Rev. B18). Ms. Karen Sabasteanski presented proposed amendments to the Regulation 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 Rule 6-2, respectively, of the Board's regulations. Ms. Sabasteanski also advised 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, 2018.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Hoagland and second by Mr. Ferguson, 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.

Minute No. 3 - Regulation for Emissions Trading (9VAC5 Chapter 140, Rev. C17). Mr. Michael G. Dowd presented a re-proposal of amendments to the Regulation for Emissions Trading concerning a Carbon Dioxide Trading Program. Mr. Dowd reviewed the history of Revision C17 to the regulations that were initiated in response to the Governor's Executive Directive 11 (ED 11), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy." Mr. Dowd reminded the Board that the Board approved a proposal for public comment on November 16, 2017, and the public comment period on the proposal ran from January 8, 2018, through April 9, 2018.

Approved Minute No. 3 - June 21, 2019

He advised the Board that the Department is proposing revisions to the amendments based on revised modeling results. The decision to update the model was based on public comment, possible changed conditions since the previous modeling, the rapid introduction of renewable energy and energy efficiency above that previously anticipated, GTSA, RGGI state additions and better integration into the RGGI program. Mr. Dowd then provided the following summary of the original proposal:

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, which is 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 a base budget of 28 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 for the purpose of 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 for the purpose of 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 in the abatement and control of air pollution, specifically, CO₂.

Further, Mr. Dowd reviewed the significant revisions proposed to the amendments, including:

- an initial CO₂ base budget of 28 million tons commencing in 2020
- subsequent annual CO₂ budgets, which decline by 3% a year under the original proposal, are reduced accordingly
- revisions to track with latest RGGI model rule
- clarification that program applies only to CO₂ emissions from fossil fuel combustion, but that is not intended to imply that the Department believes biomass combustion is necessarily carbon neutral
- clarification of the industrial exemption
- addition of a new Article 10 program review to include consideration of community impacts
- clarification of exemption language to include specific limits to excess power to the grid
- provision of 2 options for existing industrial sources to qualify for exemption
 - ≤ 10% net electrical generation sent to grid, or
 - ≤ 15% useful thermal energy provided to an entity other than the manufacturing facility to which the budget source is interconnected
- requirement for permit condition
- reassessment of CO₂ base budget in next RGGI program review
- addition of Article 10 that recognizes a commitment to environmental justice while providing Department with flexibility to listen to communities and fashion solutions on a case-by-case basis

The Board asked questions and discussed the reproposal. The Board then approved several modifications to the reproposal. The Board:

1. On a motion by Mr. Bleicher and second by Ms. Rubin, unanimously approved "Proposed Motion 1" replacing 9VAC5-140-6040 B with language shown in attachment 1.

2. On a motion by Mr. Bleicher, second by Mr. Hoagland, on a vote of 5 to 2 with Messrs. Langford and Ferguson voting no, approved "Proposed Motion 2b" replacing 9VAC5-140-6190 C with language shown in attachment 2.

3. On a motion by Ms. Moreno and second by Mr. Hoagland, unanimously approved modification of 9VAC5-140-6010 to read: This part establishes the Virginia component of the CO₂ Budget Trading Program, which is designed to reduce anthropogenic emissions of CO₂, a greenhouse gas, from CO₂ budget sources in a manner that is protective of human health and the environment, and is economically efficient.

4. On a motion by Mr. Hoagland, second by Mr. Bleicher, unanimously approved deletion of the new language in brackets in 9VAC5-140-6050 C: [that have been generated as a result of combusting fossil fuel].

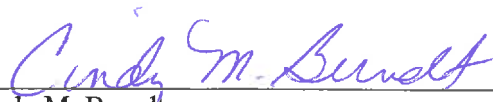
5. On a motion by Mr. Hoagland, second by Ms. Rubin, on a vote of 6 to 1 with Mr. Langford voting no, added the following to 9VAC5-140-6440: The Department will, in evaluating the impacts on environmental justice communities, including low income, minority, and tribal communities, develop and implement a plan to ensure increased participation of environmental justice communities in the review.

The Board then, based on the Board book material, staff presentation and Board discussion, on a motion by Mr. Hoagland and second by Mr. Bleicher, unanimously authorized the Department to promulgate the re-proposal, with the modifications approved by the Board at the meeting, for public comment in accordance with the APA.

Minute No. 4 - CO₂ Emissions from Sources Other Than Fossil Fuel Facilities. The Board, based on a motion from Mr. Bleicher and second from Ms. Moreno, unanimously directed the Department to provide a comprehensive overview of emissions of CO₂ from sources other than those to be regulated by Revision C17 to the Regulation for Emissions Trading, including alternatives and options for reducing CO₂ emissions from the sources. The overview is to be completed within two years and the Department will periodically update the Board on the status of the comprehensive overview.

Minute No. 5 - Public Forum. Four persons presented comments to the Board during the public forum. Ms. Heidi Berthoud made general comments on air quality and urged the Board to be climate leaders. Swami Dayananda made general comments on carbon pollution. Ms. Suzanne Keller commented on air quality and the Board's duty to protect health and safety. Mr. Glen Besa appeared to thank the Board for the Board's action on climate change.

Minute No. 6 - Future Meetings. The Board confirmed November 8-9, 2018 and December 10, 2018, as meetings dates for the remainder of 2018.


Cindy M. Berndt