

MINUTES

STATE AIR POLLUTION CONTROL BOARD

FRIDAY, DECEMBER 6, 2019

DOUBLETREE BY HILTON RICHMOND AIRPORT
445 INTERNATIONAL CENTER DRIVE
SANDSTON, VIRGINIA 23150

Board Members Present:

Ignacia S. Moreno, Chair
William H. Ferguson
Staci F. Rijal

Roy A. Hoagland, Vice-Chair
Kajal B. Kapur

Board Member Absent:

Richard D. Langford

Gail Bush

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 2:02 p.m. and adjourned the meeting at 4:04 p.m.

Minute No. 1 - Approve Agenda. The Board, on a motion by Mr. Hoagland, approved the agenda without modification.

Minute No. 2 - September 20, 2019 Minutes. The Board, on a motion by Mr. Hoagland, approved the minutes from the Board's meeting on September 20, 2019.

Minute No. 3 - Agenda Development Procedure. The Board reviewed a procedure for development of the agenda. The Board clarified that the role of the Department in the development of the agenda was unchanged and confirmed with legal counsel the Board's authority to approve the procedure. The Board, on a motion by Mr. Hoagland, approved the procedure.

Minute No. 4 - Public Engagement Committee Update and Additional Member. Mr. Hoagland updated the Board on the activity of the Public Engagement Committee. He informed the Board that the committee met on November 21, 2019 and reviewed the list of actions items developed at the meeting.

The Board also appointed Kajal Kapur to the committee.

Minute No. 5 - Director/Division Director Reports/Updates. The Board received updates from Michael Dowd, Air Division Director, and Mr. David K. Paylor, Director.

Mr. Dowd (1) advised the Board that the Board's carbon rule (Rev. C17) had become effective, but implementation is on hold due to language in the budget; (2) briefed the Board on Executive Order 43 requiring the Department of Mines, Minerals and Energy to develop a plan regarding energy production; (3) provided the Board with Balico, LLC's emergency response plan for the Chickahominy Power Plant and advised that the job training plan had not been received; and briefed the board on ground level ozone progress and path forward.

Mr. David Paylor updated the Board on the contract with Skeo for the Department's environmental justice study, provided an update on discussions with the Virginia Department of Health regarding the health assessment on the Buckingham Compressor Station.

Minute No. 6 - Nonattainment New Source Review (9VAC5-80, Rev. B19). Ms. Karen G. Sabasteanski presented final exempt amendments to the nonattainment new source review program in Article 9 of 9VAC5-80 (Permits for Stationary Sources) to address U.S. Environmental Protection Agency action taken on December 6, 2018 (80 FR 62998 that finalized nonattainment area and ozone transport region (OTR) implementation requirements for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The rule included amendments to new source review (NSR) permitting requirements for ozone nonattainment areas found in 40 CFR 51.165. These amendments enable a permitting agency to allow offset requirements for emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOC) to be met by offsetting reductions in actual emissions of either of those precursors as established by a case-specific permit ratio for ozone. Ms. Sabasteanski explained that the amendments to the Board's regulations would make Virginia's regulations the same as or equivalent to the revised federal program.

Ms. Sabasteanski also informed the Board that the amendments would correct the definition of "significant" to ensure that PM_{2.5} emissions are properly controlled in the context of federal mandates. Ms. Sabasteanski explained that default program requirements to address VOC as a PM_{2.5} precursor as put forth in EPA's August 24, 2016 (81 FR 58010) final implementation rule for the 2012 NAAQS for very fine particulate matter (PM_{2.5}) are not appropriate nor provide any benefit to Virginia's NSR program. EPA has clarified, and the Department agrees, that an emissions rate for VOC as a PM_{2.5} precursor is not as protective, transparent, quantifiable, or reliable as the original emissions rate for NO_x, particularly given the predominance of NO_x compared to VOC in the nonattainment area.

Ms. Sabasteanski reviewed the following amendments for the Board:

1. Amended the definition of "significant" in 9VAC5-80-2010 C to limit identification of VOC as a PM_{2.5} precursor in order to be consistent with EPA regulation and policy.
2. Amended 9VAC5-80-2120 M to allow offset requirements for emissions of NO_x and VOC to be met by offsetting reductions in actual emissions of either of those precursors as established by a case-specific permit ratio for ozone.

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Ferguson, unanimously (i) adopted the amendments with an effective date consistent with the Administrative Process Act and (ii) affirmed that it would 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 Administrative Process Act.

Minute No. 7 - Ozone Implementation (9VAC5-20, Rev. C19). Ms. Karen G. Sabasteanski presented final exempt amendments to Chapters 20, 30, 151 and 160 to address the U.S. Court of Appeals for the District of Columbia Circuit action on February 16, 2018, vacating portions of U.S. Environmental Protection Agency (EPA) action on March 6, 2015 (80 FR 12264) to implement the 2008 ozone National Ambient Air Quality Standard (NAAQS).

Ms. Sabasteanski explained that the 2015 rule addressed a range of nonattainment area state implementation plan (SIP) requirements for the 2008 NAAQS, including how to address the revoked 1997 NAAQS. Under Revision G16, the Virginia rules (9VAC5-20-204) were amended to call attention to the fact that the 1997 standard no longer had any effect for the purposes of ozone implementation. Revocation of the 1997 standard also meant that transportation and general conformity reviews were no longer needed in 1997 ozone maintenance areas, and the Virginia conformity regulations were amended accordingly. On February 10, 2017, the Department officially requested approval of a revision to the Virginia State Implementation Plan (SIP) for the amended regulations. Since the SIP was originally submitted, the U.S. Court of Appeals for the District of Columbia Circuit vacated portions of EPA's final implementation rule and because those provisions were vacated, EPA requested that Virginia officially withdraw the Revision G16 SIP submittal. The Revision G16 SIP submittal was withdrawn on February 27, 2019, and Virginia must now amend its regulations in order to conform to the court decision.

Ms. Sabasteanski advised the Board that in addition to addressing general implementation issues, 9VAC5-20-204 A 4 had been added in order to implement the 2015 ozone NAAQS in the Northern Virginia Ozone Nonattainment Area (40 CFR 81.309).

Ms. Sabasteanski reviewed the following amendments for the Board:

1. Removed provisions relevant to the vacated implementation rule for the 2008 ozone standard. [9VAC5-20-204 C, 9VAC5-30-55 D, 9VAC5-151-20, 9VAC5-160-30]
2. Added the Northern Virginia Ozone Nonattainment Area for the 2015 ozone NAAQS. [9VAC5-20-204 A 4]

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

Minute No. 8 - Federal Documents Incorporated by Reference (Rev. D19). Ms. Karen G. Sabasteanski presented final exempt amendments to Rules 5-5, 6-1, and Rule 6-2 of the Board's regulations 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 advised the Board that there were no new standards and the only amendment would update the regulations to reflect incorporation of the Code of Federal Regulations as published on July 1, 2019.

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

Minute No. 9 - Technical Documents Incorporated by Reference (9VAC5-20, Rev. E19). Ms. Karen G. Sabasteanski presented final exempt amendments to the general provisions of the Regulations for the Control and Abatement of Air Pollution. Ms. Sabasteanski informed the Board that the § 10.1-1307.03 of the Code of Virginia requires that the Board adopt regulations to implement and enforce the requirements of § 328 of the federal Clean Air Act relating to requirements to control air pollution from Outer Continental Shelf (OCS) sources located offshore of the Commonwealth. The regulations may not differ materially from the regulations promulgated by the U.S. Environmental Protection Agency (EPA) in implementing § 328 of the Clean Air Act (40 CFR Part 55). To implement the legislation, 9VAC5-20-21 (Documents Incorporated by Reference) is amended to add 40 CFR Part 55.

Ms. Sabasteanski advised the Board that EPA has informed the Department that three specific sections of 40 CFR Part 55 were not delegable to the states--§ 55.5 (Corresponding onshore area designation), § 55.11 (Delegation), and § 55.12 (Consistency Updates)--because, as stated in 40 CFR 55.11(a), the authority to implement and enforce those provisions will not be delegated by EPA. As a result, this regulatory action clarifies that those provisions are not incorporated into the Board's regulations.


Ms. Sabasteanski reviewed the amendment that specifies in 9VAC5-20-21 E 1 a (3) that 40 CFR 55.5, 55.11, and 55.12 are not incorporated.

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

Minute No. 10 - High Priority Violations (HPVs) For The Fourth Quarter 2019. Ms. Kerri Nicholas presented a report on High Priority Violations for the Fourth Quarter of 2019.

Minute No. 11 - Public Forum. No one appeared during the public forum.

Minute No. 12 - Future Meetings. - Ms. Berndt advised the Board that the schedule for meetings in 2020 would be set later.



Cindy M. Berndt

Approved 6/18/2020