

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, APRIL 23, 2021

ELECTRONIC COMMUNICATION MEETING

Board Members Present:

Roy A. Hoagland, Chair
Richard D. Langford
Dr. Lornel G. Tompkins

Kajal B. Kapur, Vice-Chair
Staci F. Rijal
Gail Bush

Board Members Absent: Hope F. Cupit

Department of Environmental Quality:

David K. Paylor, Director
Debra A. Harris

Cindy M. Berndt

Attorney General's Office:

Jerald Hess, 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 11:36 a.m., reconvened at 12:16 p.m., and adjourned at 2:45 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 Mr. Langford and seconded by Ms. Bush, unanimously approved the agenda with one modification - removal of the item regarding the letter from the Southern Environmental Law Center. The vote, taken by roll call was 6 - 0.

Minute No. 2 - December 3, 2020, Minutes: The Board, on a motion by Ms. Rijal and seconded by Ms. Kapur, approved the minutes from the Board's meeting on December 3, 2020, with two editorial changes. The vote, taken by roll call, was 6-0.

Minute No. 3 - Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-uses. (Rev. D20) - Exempt Final Regulation:

Mr. Gary E. Graham presented final regulations concerning prohibitions on use of certain hydrofluorocarbons in specific end uses. Mr. Graham informed the Board that the 2020 Acts of Assembly Chapter 1289 (Budget Bill), Item 378, subdivision B 2 required the State Air Pollution

Control Board to adopt regulations to prohibit the sale, lease, rent, installation or entry into commerce in Virginia of any products or equipment that use or will use hydrofluorocarbons (HFCs) for the applications and end uses restricted by Appendix U and Appendix V of Subpart G of 40 C.F.R. Part 82, as those read on January 3, 2017. Additionally, in subdivision B 3, it provided that regulations adopted by the State Air Pollution Control Board to initially implement the provisions of this item were exempt from Chapter 40 of Title 2.2, Code of Virginia and the regulation become effective no later than July 1, 2021.

Mr. Graham further advised the Board that an amendment to Item 378 was enacted during Special Session I of the 2020 General Assembly (Chapter 56 of the 2020 Special Session I Acts of Assembly) requiring that the board not prohibit the use of hydrofluorocarbons in the manufacturing process by extruded polystyrene (XPS) boardstock and billet manufacturers located in Virginia until the Board has solicited input from those manufacturers in order to determine and set a feasible date by which such manufacturers must be required to comply. The amendment also directed the board to solicit input from a workgroup of relevant stakeholders in developing the regulation.

Pursuant to the amendment of Item 378 enacted by Chapter 56 of the 2020 Special Session I Acts of Assembly, a "workgroup of relevant stakeholders" including XPS boardstock and billet manufacturers, other HFC product manufacturers, and non-government environmental organizations was selected to provide input to the Department concerning this regulation. The workgroup met three times and discussed regulation text, feasible compliance dates, and other regulatory compliance issues. The workgroup achieved consensus on all issues, including the proposed regulation text.

Mr. Graham reviewed the following substantive provisions of the regulation:

1. The prohibitions and restricted end uses of 40 CFR Part 82, Subpart G, Appendices U and V are incorporated into the regulation by reference.
2. Exemptions were provided for (i) sell-through of products and equipment manufactured prior to the compliance dates provided in the regulation; (ii) use of products and equipment manufactured prior to the compliance dates provided in the regulation (iii) exemptions required by the federal American Innovation and Manufacturing Act of 2020 (Section 103 of Division S of H.R. 133, Consolidated Appropriations Act, 2021); and (iv) extruded polystyrene boardstock products and equipment manufactured in Virginia intended only for sale and distribution outside of Virginia.
3. Definitions of the terms used in Appendices U and V and the regulation are only those necessary to implement the regulation.
4. Compliance dates begin as of January 1, 2022 and any later compliance dates provided in Appendices U and V are preserved.
5. A compliance date feasibility study is required from Virginia manufacturers of extruded polystyrene boardstock products so that a feasible compliance date can be determined after the regulation is effective.

The Board then received public comment from the following persons: Nicholas Georges (Household & Commercial Products Association) , Jessica Olson (Honeywell), Schuyler Pulley

(The Chemours Company), Lisa Massaro (Dupont), Jean-Francois Cote, Ming Xie (Kingspan Insulations LLC), Christina Theodoridi (Natural Resources Defense Council), Tanisha Edwards (Southern Environmental Law Center), and Doug Raymond (National Aerosol Association). Several of the speakers spoke in favor of the Board's adoption of the regulation. Mr. Georges and Mr. Raymond, while supportive of the regulation, expressed concerns with the recordkeeping and labelling provisions as they relate to the aerosol can industry.

After Board discussion and questions, Mr. Graham recommended that the Board adopt the proposal with an effective date of June 1, 2021.

Ms. Kapur moved and Dr. Tompkins seconded a motion to adopt the staff recommendation. A motion by Mr. Langford to amend the regulation to address the concerns of the aerosol can industry on recordkeeping and labelling failed for lack of a second.

The Board unanimously approved the staff recommendation. (The vote, taken by roll call, was 6-0.)

Minute No. 4 - High Priority Violators Report: The Board received a report on High Priority Violators for the First Quarter of 2021 from Ms. Kerri Nicholas.

Minute No. 5 - Director and Division Directors' Report: Mr. Paylor updated the Board on the budget, the establishment of the Environmental Justice Office, the identification of environmental justice communities, and the agency response to COVID-19. Mr. Dowd updated the Board on pending regulatory actions (site-suitability criteria, greenhouse gas emissions inventory, and advanced clean cars), pending permits (Lambert Compressor Station), and RGGI.

Minute No. 6 - Public Engagement Committee Update: Mr. Hoagland updated the Board on the most recent activities of the public engagement committee and plans for the recommendations to the full Board at the next meeting.

Minute No. 7 - Board Member/Public Communication Discussion: Mr. Hoagland advised the Board that he had received questions regarding individual members discussing matters with the public. He reminded the Board of the best practices prepared by the Department and the Attorney General's Office on this subject, but indicated his position on the topic was more flexible than that included in the best practices; and he had been advised that there was no legal prohibition on individual members talking to the public. During the discussions it was pointed out that substantive communications needed to be included in the agency record, and that the statute would control what could be considered by the Board when rendering a decision; e.g. for permitting the statute provides that the Board consider public comment received during the public comment period.

Minute No. 8 - Public Forum: The following persons appeared during the public forum: Freeda Cathcart, Jessica Sims (Appalachian Voices), Betty Myers (Love Central Virginia), and Liz Williamson (Virginia Manufacturers Association). Topics of discussion included the Board establishing a regulatory committee, denying the permit for the Lambert Compressor Station, imposing a moratorium on fossil fuel permits, Braven Environmental LLC (Cumberland County), and participation by the regulated community in the development of guidance and regulations.

Minute No. 9 - Future Meetings: The Board confirmed June 25, September 17 and December 3, 2021, as the dates of their future meetings. In addition, the Board discussed the need to try to

make use of electronic communication meetings once the COVID-19 authorization expires and discussed options for the June 25 meeting including changing the date, a 2-day meeting and changing normal start time.


Cindy M. Berndt

Approved Minute No. 3
July 7, 2021