

MINUTES
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, JUNE 8, 2012
GENERAL ASSEMBLY BUILDING
HOUSE ROOM C
9TH & BROAD STREETS
RICHMOND, VIRGINIA

Convene – 10:00 a.m.

Board Members Present:

Roger Chaffe, Chair
Hullihen Williams Moore
Manning "Chip" Gasch, Jr.
Tedd Jett

Richard Langford, Vice-Chair
Sterling E. Rives III
Jo Anne Scott Webb

Department of Environmental Quality:

David K. Paylor
Debra Miller

Cindy M. Berndt

Attorney General's Office:

David Grandis, Attorney General's Office

These minutes summarize activities that took place at this Board Meeting. The meeting convened at 10:00 A.M. and adjourned at 11:45 A.M.

Minute No. 1 - Review and Approval of Agenda: The Board approved the agenda with the addition of a status report from Mr. Langford on the State Advisory Board on Air Pollution charter project.

Minute No. 2 - Minutes: The Board, on a motion by Mr. Gasch, unanimously approved the minutes from the March 23, 2012, meeting.

Minute No. 3 - Title V Fees (Rev. D12) - Exempt Final Regulation: Mr. Gary E. Graham presented amendments to the regulations for the control and abatement of air pollution concerning fees for Title V permit program funding. Mr. Graham explained that the 2012 Budget Bill (item 365, subsection B), passed by the General Assembly required that the board adopt regulations adjusting permit program emissions fees and establishing permit application processing fees and permit maintenance fees sufficient to ensure that revenue covers total direct and indirect program costs. All of the fees are to be adjusted annually by the Consumer Price Index. Other provisions of the Bill required that (i) all emission fees are to be collected annually, (ii) the initial adjustment of emission fee rates shall not exceed 30 percent over current rates, (iii) permit application fees shall not be credited toward the amount of emission fees owed, (iv) regulations adopted to implement the provisions of this item shall be exempt from the Administrative Process Act, and (v) the regulations are to be effective no later than July 1, 2012.

Approved minutes No. 2
September 14, 2012

Mr. Graham presented information on program costs and revenue projections, explained the calculation of the emission fee rates and summarized public comment received on the proposed amendments. In addition, he reviewed the substantive amendments including:

1. Article 2 (9VAC5-80-310 et seq.) of 9VAC5-80 (Permits for Stationary Sources): The name of the annual permit program fee in Article 2 is changed to clarify that these fees are emissions fees and not application fees or maintenance fees. The base amount for calculating annual permit program emission fees is increased from \$25 per ton of emissions to \$31.22 per ton (adjusted by the Consumer Price Index to \$57.90), resulting in an initial emission fee rate increase of less than 30% over current rates. Various other changes are made to Article 2: (i) to remove outdated provisions; (ii) to correct the minimum threshold for payment, (iii) to correct references and format; (iv) to allow other modes of payment; and (v) to clarify certain actions under the regulation.

2. Article 10 (9VAC5-80-2250 et seq.) of 9VAC5-80 (Permits for Stationary Sources): Permit application fees are expanded to include fees for all types of permits that make a stationary source subject to permit requirements under Title V and all types of permits that would remove a stationary source that is otherwise subject to Title V permit requirements from applicability under Title V. A method of making annual adjustments to the application fees for changes in the Consumer Price Index (CPI) is added, and the annual permit program emission fee credit for the cost of the permit application fees is removed. The types of permits to which permit application fees apply and the process for paying the fees has been clarified.

3. Article 11 (9VAC5-80-2310 et seq.) establishes new annual permit maintenance fees for (i) all stationary sources operating under either permit requirements or a permit application shield issued pursuant to Title V, or (ii) all sources operating under federally enforceable permits issued to keep a stationary source from applicability under permit requirements of Title V. The method of determining and adjusting the permit maintenance fee amounts annually for changes in the CPI is specified. The process for assessing, billing, and paying the fees is also specified.

The Board then received comment from Ms. Alice Scott representing the Virginia Manufacturers' Association, Mr. David Smith representing Old Dominion Electric Cooperative, Mr. Lenny Dupuis representing Dominion Resources and Mr. August Wallmeyer representing Virginia Independent Power Producers.

Based on the Board book material; staff presentation, Board discussion and questions; and public comments received at the meeting, the Board, on a motion by Mr. Rives, unanimously:

(i) based on the language of item 365 B1 and B2 of House Bill 1301 (budget bill) passed by the 2012 General Assembly, adopt the amendments as presented, and

(ii) upon action by the Governor on House Bill 1301 and if such action does not change the language of item 365 B1 and B2, direct the Department to take the necessary administrative steps for the amendment to become effective.

(Mr. Langford declared, in writing, that he is a retiree of a permit holder that is affected by Revision D12, but was able to participate in deciding whether to adopt the amendments fairly, objectively and in the public interest. In addition, Mr. Jett declared, in writing, that he is a retiree of a permit holder that is affected by Revision D12, but was able to participate in deciding whether to adopt the amendments fairly, objectively and in the public interest.)

Minute No. 4 - Transportation Conformity (9VAC5 Chapter 151, Rev. C12) –Request for Board Action on Exempt Final Regulation: Ms. Mary E. Major presented amendments to the regulation for transportation conformity. Ms. Major explained that the U.S. Environmental Protection Agency promulgated amendments to the federal transportation regulation on March 14, 2012 (77 FR 14979). In this action, EPA

amended the transportation conformity rule to make the rule apply to any future new or revised national ambient air quality standards (NAAQS). The rule restructures two sections of the transportation conformity rule, 40 CFR 93.109 and 93.119, so that existing requirements will apply for any new or revised NAAQS.

Ms. Major advised the Board that in order to implement the federal transportation conformity requirements, the Virginia regulation, 9VAC5 Chapter 151, must be amended to reflect the recent revisions made to the federal regulations. She informed the Board that the substantive amendments to the regulation included:

1. The general section [9VAC5-151-40] incorporates by reference portions of the EPA Regulation for Transportation Conformity (40 CFR Part 93) into the state regulation. This section also indicates that the specific version of the provisions adopted by reference are those contained in the most currently available CFR in effect as published on July 1, 2010. Changes have been made to update the CFR reference to July 1, 2012, which includes the recent Federal Register notice of March 14, 2012.
2. The consultation section [9VAC5-151-70] outlines specifically how the various government agencies, federal, state and local, will interact with and consult with each other and the general public in the development of transportation plans and associated conformity determinations. One change has been made; the reference in 9VAC5-151-70 D 1 f has been changed from 40 CFR 93.109(n)(2)(iii) to 40 CFR 93.109(g)(2)(iii).

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Moore, unanimously (i) adopted the proposal with an effective date consistent with the APA and (ii) 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 APA.

Minute No. 5 - Sewage Sludge Incinerators (9VAC5 Chapter 40, Rev. B12) - Request for Board Action on Exempt Final Regulation: Ms. Karen G. Sabasteanski presented amendments to the regulations for the control and abatement of air pollution concerning emission limitations for existing sewage sludge incinerators. Ms. Sabasteanski explained that the U.S. Environmental Protection Agency (EPA) established emission guidelines for sewage sludge incinerators in the Federal Register of March 21, 2011 (76 FR 15372) and that Virginia must develop and adopt a state regulation containing those standards in order to implement the emission guidelines. These standards are needed in order to control the emissions generated by sewage sludge incinerators--particulate matter, hydrogen chloride, carbon monoxide, dioxin/furan, mercury, nitrogen oxides, sulfur dioxide, cadmium, and lead--to a level needed to protect public health and welfare.

Ms. Sabasteanski briefly reviewed for the Board the provisions included in the amendments, including:

1. The list of federal documents incorporated by reference has been updated to reference the most recent (2012) version. [9VAC5-20-21 B]
2. The affected facilities to which the provisions of this article apply are specified. [9VAC5-40-8200]
3. Definitions needed to implement the regulation are described or referenced. [9VAC5-40-8210]
4. Emission limits and emission standards as required by 40 CFR 60.5165 are specified. [9VAC5-40-8220]
5. Provisions for visible emissions are established. [9VAC5-40-8230]
6. Provisions for fugitive dust/emissions are established. [9VAC5-40-8240]
7. Provisions for odor are established. [9VAC5-40-8250]
8. Provisions for toxic pollutants are established. [9VAC5-40-8260]
9. Operator training requirements are specified. [9VAC5-40-8270]
10. A compliance schedule is provided. [9VAC5-40-8280,]
11. Operating requirements are specified. [9VAC5-40-8290]
12. Compliance provisions are established. [9VAC5-40-8300].
13. Performance testing, monitoring, and calibration requirements are established. [9VAC5-40-8310]
14. Recordkeeping and reporting requirements are established. [9VAC5-40-8320]

15. Registration requirements are specified. [9VAC5-40-8330]
16. Facility and control equipment maintenance or malfunction requirements are established. [9VAC5-40-8340]
17. Requirements for federal (Title V) operating permits are provided. [9VAC5-40-8350]
18. Sources are alerted to the potential necessity of obtaining permits. [9VAC5-40-8360]
19. Documents incorporated by reference are listed. [9VAC5-40-8370].

Based on the Board book material, staff presentation and Board discussion, the Board, on a motion by Mr. Langford, unanimously (i) adopted the proposal with an effective date consistent with the APA and (ii) 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 APA.

Minute No. 6 - High Priority Violators (Hpv's) for the Second Quarter, 2012: The Board received a report on high priority violators for the second quarter of 2012 from Mr. Craig Nicol.

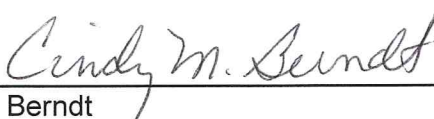
Minute No. 7 - Public Forum: No one appeared during the public forum.

Minute No. 8 - Legislative Update: The Board received a report from Ms. Angela Jenkins, Policy Director, on 2012 legislation impacting the air, water, waste and Department statutes.

Minute No. 9 - Air Division Director Report: The Board received a report from Mr. Michael Dowd, Air Division Director on One Hour SO₂ National Ambient Air Quality Standard Implementation, Act II and the U.S. Environmental Protection Agency's Ozone Advance Program for the Hampton Roads, Richmond-Petersburg and Fredericksburg areas.

Minute No. 10 - State Advisory Board Charter: Mr. Richard Langford advised the Board the he and Mr. Dowd discussed the charter for the State Advisory Board on Air Pollution with members of the Advisory Board at its last meeting. Based on those discussions, a subcommittee was established to discuss the need for and the role of the Advisory Board, as well as possible revisions to the charter.

Minute No. 11 - Future Meetings: The Board cancelled the June 29, 2012 date and confirmed September 14 and November 30, 2012 as the dates of their future meetings.


Cindy M. Berndt