

TENTATIVE AGENDA  
STATE AIR POLLUTION CONTROL BOARD MEETING

FRIDAY, JUNE 21, 2013  
GENERAL ASSEMBLY BUILDING  
HOUSE ROOM C  
9TH & BROAD STREETS  
RICHMOND, VIRGINIA

Convene – 10:00 a.m.

|             |  |              |            |
|-------------|--|--------------|------------|
|             |  |              | <b>TAB</b> |
| <b>I.</b>   | <b>Review and Approve Agenda</b>   |              |            |
| <b>II.</b>  | <b>Minutes</b> (March 13, 2013)  |              | A          |
| <b>III.</b> | <b>Regulations - Final Exempt</b>  |              |            |
|             | Regulation for the Control of Motor Vehicle Emissions in<br>In Northern Virginia (9VAC5-91, Rev. MO) | Major        | B          |
|             | Regulated Medical Waste Incinerators (9VAC5-50,<br>Rev. C13) - Repeal                                | Sabasteanski | C          |
|             | Commercial/Industrial Solid Waste Incinerators (9VAC5-40,<br>Rev. E13)                               | Sabasteanski | D          |
|             | Electronic Transmittals (Rev. F13)   | Graham       | E          |
| <b>IV.</b>  | <b>Regulations - Fast-Track</b>  |              |            |
|             | Definition of Volatile Organic Compound (9VAC5-10, Rev. D13)   | Sabasteanski | F          |
| <b>V.</b>   | <b>High Priority Violators Report</b>  | Nicholas     |            |
| <b>V.</b>   | <b>Public Forum</b>  |              |            |
| <b>VI.</b>  | <b>Other Business</b>  |              |            |
|             | Air Division Director's Report   | Dowd         |            |
|             | Future Meetings  |              |            |

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Cindy M. Berndt at (804) 698-4378.

**PUBLIC COMMENTS AT STATE AIR POLLUTION CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions. These procedures establish the times for the public to provide appropriate comment to the Board for its consideration. For REGULATORY ACTIONS (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department of Environmental Quality and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For CASE DECISIONS (issuance and amendment of permits), the Board adopts public participation procedures in the individual regulations which establish the permit programs. As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held. In light of these established procedures, the Board accepts public comment on regulatory actions and case decisions, as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Persons are allowed up to 3 minutes to address the Board on the emergency regulation under consideration.

**CASE DECISIONS:** Comments on pending case decisions at Board meetings are accepted only when the staff initially presents the pending case decision to the Board for final action. At that time the Board will allow up to 5 minutes for the applicant/owner to make his complete presentation on the pending decision, unless the applicant/owner objects to specific conditions of the decision. In that case, the applicant/owner will be allowed up to 15 minutes to make his complete presentation. The Board will then allow others who commented at the public hearing or during the public comment period up to 3 minutes to exercise their rights to respond to the summary of the prior public comment period presented to the Board. No public comment is allowed on case decisions when a FORMAL HEARING is being held.

**POOLING MINUTES:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

**NEW INFORMATION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action or pending case decision to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department of Environmental Quality (Department) staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. In the case of a regulatory action, should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda, pending regulatory actions or pending case decisions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Cindy M. Berndt, Director, Regulatory Affairs, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4378; fax (804) 698-4346; e-mail: [cindy.berndt@deq.virginia.gov](mailto:cindy.berndt@deq.virginia.gov).

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**Regulation for the Control of Motor Vehicle Emissions in Northern Virginia, Program Coordinator (9 VAC 5 Chapter 91, Rev. MO) - Request for Board Action on Exempt Final Regulation:** The current program requires that affected vehicles be presented to emissions inspection stations biennially to receive an emissions inspection. The geographic coverage of the program consists of the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Cars and trucks weighing up to 10,000 pounds and are 25 years old and newer are subject to an exhaust emissions inspection using ASM equipment which tests cars under "loaded" conditions using a dynamometer. On-Board Diagnostics Systems (OBD) on vehicles so equipped will also be inspected. In addition, random testing of vehicles is accomplished using either

roadside pullovers or a remote sensing device next to the roadway. Failing vehicles are required to report to an inspection station for an out-of-cycle test.

The proposed amendments are being made to conform to state law. Chapters 216 and 824 of the 2012 Acts of Assembly authorized the Director of DEQ to enter into an agreement to designate a program coordinator to implement all inspection programs, except those utilizing remote sensing. It also stipulated that the Director shall determine the services to be provided by the program coordinator and the amount to be paid to the program coordinator for such services. In addition, Chapter 348 of the 2013 Acts of Assembly provides for the electronic transmittal of certain documents and Chapter 634 of the 2013 Acts of the Assembly provides for the exemption from testing for certain hybrid vehicles.

The program coordinator amendments are exempt from the standard regulatory process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of Chapters 216 and 824 of the 2012 Acts of Assembly. The amendments to implement Chapters 348 and 634 are exempt from the standard regulation process pursuant to § 2.2-4006 A 4 a of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date.

Notice of the public's opportunity to comment was provided April 24, through May 10, 2013, in the Virginia Regulatory Town Hall. The notice indicated that public comment would also be accepted at the board meeting in accordance with the board's policy on public comment at board meetings. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website as well as to members of the stakeholder group established to make recommendations on specific requirements for management of the vehicle emissions inspection and maintenance program utilizing a program coordinator.

To solicit comment from the public on the proposed regulation amendments, the department issued a notice that provided for receiving informal comment during a comment period noticed in the Virginia Regulatory Town Hall. No comment was received.

Below is a brief summary of the substantive amendments the department is recommending be made to the regulation.

1. Modify definition of "Affected motor vehicle" to clarify that 2008 or 2009 hybrid vehicles with a 48 miles per gallon EPA rating shall be exempt from testing (9VAC-5-91-20).
2. Delete the definitions no longer used in the regulation (9VAC5-91-20):
  - "Basic test and repair program"
  - "Bi fuel"
  - "Canister"
  - "Dedicated alternative fuel vehicle"
  - "Dedicated fuel vehicle"
  - "Dual fuel"
  - "Evaporative system pressure test"
  - "Flexible fuel vehicle"
  - "Fuel filler cap pressure test"
  - "Original condition"
  - "Standard conditions"
  - "Standardized instruments"
  - "True concentration"
  - "Zero gas"
3. Add regulatory language to incorporate provisions for a program coordinator. This also includes modifying the definition of "Authorized personnel" and adding the definition "Program coordinator".
  - Modified sections include:
    - 9VAC-5-91-30 A 7
    - 9VAC-5-91-330
    - 9VAC5-91-660
    - 9VAC5-91-670
  - New sections include:

9VAC5-91-665

9VAC5-91-675

4. Repeal 9VAC5-91- 450, Evaporative system pressure test and gas cap pressure test procedure, and all references to the tests throughout the regulation as the tests are obsolete.

Sections affected include the following

9VAC 5-91-200

9VAC5-91-390 F 11

9VAC5-91-410 A 7

9VAC5-91-420 D 4

9VAC5-91-420 K, through N

9VAC5-91-430 A 2 a and b

9VAC5-91-440 A 7 a and b

9VAC5-91-650 A

9VAC5-91-650 A

9VAC5-91-650 C

9VAC5-91-710 B

5. Add provision to utilize electronic delivery of information.

Provisions affected include:

9VAC-5-91-70 A

9VAC5-91-570 G 2

9VAC5-91-720

**Repeal of Standards for Regulated Medical Waste Incinerators (Article 6 of 9VAC5 Chapter 50, Rev. C13) - Request for Board Action on Exempt Final Regulation:** Rule 5-6, Standards Of Performance For Regulated Medical Waste Incinerators (Article 6 of 9VAC5-50) was originally adopted in response to a directive from the General Assembly in 1992 (Chapters 773, 774, and 751). Since Article 6 was adopted, a more restrictive U.S. Environmental Protection Agency (EPA) new source performance standard (NSPS) covering the same type of sources was promulgated and adopted by Virginia. Because there is no longer a need for the original, less-restrictive Virginia regulation, the 2013 General Assembly enacted Chapter 632, which removes the provisions relevant to air quality from Chapters 773, 774, and 751. Rule 5-6 may be now be repealed because its underlying state requirement has been removed.

The department is requesting approval of draft final regulation amendments that meet state statutory and regulatory requirements. Approval of the amendments will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act and state law.

Because the repeal of the state regulation is necessary to conform to Virginia statutory law, repeal of the state regulation is exempt from the standard regulatory process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the standard regulatory adoption process and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. Further, in adopting the regulation amendments under the provisions of § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Notice that the regulation would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

Below is a brief summary of the substantive amendments the department is recommending be made to the regulation.

Article 6 of 9VAC5-50 (New and Modified Stationary Sources) is repealed in its entirety.

**Commercial/Industrial Solid Waste Incinerators (9VAC5 Chapter 40, Rev. E13) - Request for Board Action on Exempt Final Regulation:**

Designated pollutants are pollutants for which new source performance standards have been established under § 111(b) of the federal Clean Air Act. A designated facility is an existing facility which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the facility were new. Under § 111(d) of the Act, the U.S. Environmental Protection Agency (EPA) is required to establish procedures for states to submit plans to control facilities that emit designated pollutants. Section 129 requires that EPA establish performance standards and other requirements pursuant to § 111 and § 129 for each category of solid waste incineration units. Such standards include emissions limitations and other requirements applicable to new units and guidelines and other requirements applicable to existing units.

Subpart B of 40 CFR Part 60 provides that EPA publish guideline documents for development of state emission standards after promulgation of any standard of performance for designated pollutants. These emission guidelines reflect the degree of emission reduction attainable with the best adequately demonstrated systems of emission reduction, considering costs, applied to existing facilities.

EPA amended its emission guidelines for commercial/industrial solid waste incinerators (CISWIs) on February 7, 2013 (78 FR 9112). In order to implement the emission guidelines, it is necessary for Virginia to adopt these amendments. These standards are needed in order to control the emissions generated by CISWIs--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. Additionally, in the interest of making the state regulation operate more efficiently, it is being revised to adopt the federal requirements by reference.

The department is requesting approval of a draft final regulation that meets federal statutory and regulatory requirements. Approval of the regulation will ensure that the Commonwealth will be able to meet its obligations under the Clean Air Act.

Because the state regulations are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations, the state regulations are exempt from the standard regulatory adoption process (Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act) by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act. However, notice of the regulation adoption must be forwarded to the Registrar for publication in the Virginia Register 30 days prior to the effective date. Also, the Registrar must agree that the regulations are not materially different from the federal version and are, therefore, exempt from the standard regulatory adoption process and must notify the agency accordingly. This notification and the notice of adoption will be published in the Virginia Register subsequently. Further, in adopting the regulation amendments under the provisions of § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Notice that the regulation would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

Below is a brief summary of the substantive regulatory provisions.

1. The list of federal documents incorporated by reference has been updated to reference the most recent (2013) version. [9VAC5-20-21 B]
2. The affected facilities to which the provisions of this article apply are specified. [9VAC5-40-6250]
3. Definitions needed to implement the regulation are described or referenced. [9VAC5-40-6260]
4. Emission limits and emission standards as required by 40 CFR 60.2670 are referenced. [9VAC5-40-6270]
5. Sections germane to emission standards that are no longer needed have been reserved. [9VAC5-40-6280 through 9VAC5-40-6350]
6. Provisions for fugitive dust/emissions are established. [9VAC5-40-6370]
7. The citations for odor and toxic pollutants are corrected. [9VAC5-40-6380 and 9VAC5-40-6390]
8. Operator training requirements are specified. [9VAC5-40-6400]
9. Requirements for a waste management plan are referenced. [9VAC5-40-6410]

10. A compliance schedule is provided. [9VAC5-40-6420]
11. Sections germane to compliance that are no longer needed are reserved. [9VAC5-40-6421 and 9VAC5-40-6422]
12. Operating limits are specified. [9VAC5-40-6430]
13. Facility and control equipment maintenance or malfunction provisions are established. [9VAC5-40-6440]
14. Performance testing requirements are established. [9VAC5-40-6450]
15. Compliance requirements are established. [9VAC5-40-6460]
16. Monitoring requirements are established. [9VAC5-40-6470]
17. Recordkeeping and reporting requirements are established. [9VAC5-40-6480]
18. Requirements for air curtain incinerators are established. [9VAC5-40-6490]
19. Sources are alerted to the potential necessity of obtaining permits. [9VAC5-40-6510]
20. Documents incorporated by reference are listed. [9VAC5-40-6520]

**Electronic Transmittals (Rev. F13) - Request for Board Action on Exempt Final Regulation:** Because this amendment to state regulations is necessary to conform to Virginia statutory law, this action is exempt from the standard regulatory process pursuant to Article 2 of the Administrative Process Act (§ 2.2-4006 et seq. of the Code of Virginia) by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act. In adopting the regulation amendments under the provisions of § 2.2-4006, the board is required to state that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Notice that the regulation would be considered by the board and that public comment would be accepted at the board meeting in accordance with the board's policy on public comment at board meetings was provided to the public by posting of the board's agenda to the Virginia Regulatory Town Hall and DEQ web site. In addition, email notification was provided to those persons signed up to receive notifications of board meetings through the Town Hall website.

Below is a brief summary of the substantive amendments the department is recommending be made to the regulation.

The general definitions in the Regulations for the Control and Abatement of Air Pollution were amended to add definitions for "mail" and "certified mail" that conform to the statutory definitions. Appeal procedures in the Regulation for General Administration were amended to provide a deadline for filing petitions for a formal hearing based upon a date of notification of board action that was provided by electronic mail.

**Definition of Volatile Organic Compound (9VAC5 Chapter 10, Rev. D13) - Request to Publish Proposal for Public Comment and Use the Fast-Track Process:** Section 109 (a) of the federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) to protect public health. Section 110 mandates that each state adopt and submit to EPA a state implementation plan (SIP) which provides for the implementation, maintenance, and enforcement of the NAAQS. Ozone, one of the pollutants for which there is a NAAQS, is in part created by emissions of volatile organic compounds (VOCs). Therefore, in order to control ozone, VOCs must be addressed in Virginia's SIP.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. Section 51.100, which consists of a list of definitions, includes a definition of VOC. This definition is revised by EPA in order to add or remove VOCs as necessary. If, for example, it can be demonstrated that a particular VOC is "negligibly reactive"--that is, if it can be shown that a VOC is not as reactive and therefore does not have a significant effect on ground-level or upper atmospheric ozone--then EPA may remove that substance from the definition of VOC.

On February 12, 2013 (78 FR 9823), EPA revised the definition of VOC in 40 CFR 51.100 to exclude HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); and HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)) from the definition of VOC. Additionally, EPA corrected the citation for 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300). These changes to the exemption list became effective on March 14, 2013.

The purpose of 9VAC5 Chapter 10 (general definitions) is not to impose any regulatory requirements in and of itself, but to provide a basis for and support to other provisions of the Regulations for the Control and Abatement of Air Pollution, which are in place in order to protect public health and welfare. The proposed amendments are being made

to ensure that the definition of VOC, which is crucial to many of the regulations, is up-to-date and scientifically accurate, as well as consistent with the overall EPA requirements.

The department is requesting approval of a proposal for public comment that meets federal statutory and regulatory requirements. Approval of the proposal will ensure that the Commonwealth will be able to meet its obligations under the federal Clean Air Act.

The department did not issue a notice of intended regulatory action nor conduct any associated public participation activities because we are requesting that the board adopt the amendments as final regulations provided they complete the fast-track rulemaking process as provided in the Code of Virginia. Under the provisions of § 2.2-4012.1 of the Administrative Process Act, agencies may use the fast-track rulemaking process for regulations that are expected to be noncontroversial. The reasons for using the fast-track rulemaking process may be found in the agency background document.

Under the fast-track process, the proposal will be subject to a 30-day public comment period. If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, or the department finds it necessary, based on public comments or for any other reason, to make any changes to the proposal, the department will (i) file notice with the Registrar of Regulations for publication in the Virginia Register and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Otherwise, the regulation becomes effective 15 days after the end of the public comment period.

Below is a brief summary of the substantive amendments the department is recommending be made to the regulation.

The general definitions (9VAC5-10-20) impose no regulatory requirements in and of themselves but provide support to other provisions of the Regulations for the Control and Abatement of Air Pollution. The list of substances not considered to be VOCs in Virginia has been revised to include HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); and HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)). In addition, the listing for 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300) is being corrected.

#### DEPARTMENT RECOMMENDATION

It is recommended that the board authorize the department to:

1. Promulgate the attached 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. The board's authorization should also be understood to constitute its adoption of the regulation 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.