

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia, relating to
2 electronic meetings by the Air Pollution Control Board and the State Water Control Board.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That §§ 10.1-1322.01 and 62.1-44.15:02 of the Code of Virginia are amended and reenacted as**
5 **follows:**

6 § 10.1-1322.01. Permits; procedures for public hearings and permits before the Board.

7 A. During the public comment period on a permit action, interested persons may request a public
8 hearing to contest such action or the terms and conditions thereof. Where public hearings are mandatory
9 under state or federal law or regulation, interested persons may request, during the public comment
10 period on the permit action, that the Board consider the permit action pursuant to the requirements of
11 this section.

12 B. Requests for a public hearing or Board consideration shall contain the following information:

- 13 1. The name, mailing address, and telephone number of the requester;
- 14 2. The names and addresses of all persons for whom the requester is acting as a representative
15 (for the purposes of this requirement, an unincorporated association is a person);
- 16 3. The reason why a public hearing or Board consideration is requested;
- 17 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the
18 requester or of the persons for whom the requester is acting as representative in the application or
19 tentative determination, including an explanation of how and to what extent such interest would be
20 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in
21 question; and
- 22 5. Where possible, specific references to the terms and conditions of the permit in question,
23 together with suggested revisions and alterations of those terms and conditions that the requester

24 considers are needed to conform the permit to the intent and provisions of the State Air Pollution
25 Control Law (§ 10.1-1300 et seq.).

26 C. Upon completion of the public comment period on a permit action, the Director shall review
27 all timely requests for public hearing or Board consideration filed during the public comment period on
28 the permit action and within 30 calendar days following the expiration of the time period for the
29 submission of requests shall grant a public hearing or Board consideration after the public hearing
30 required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if
31 the Director finds the following:

32 1. That there is a significant public interest in the issuance, denial, modification, or revocation of
33 the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public
34 hearing or Board consideration;

35 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,
36 modification, or revocation of the permit in question; and

37 3. That the action requested by the interested party is not on its face inconsistent with, or in
38 violation of, the State Air Pollution Control Law (§ 10.1-1300 et seq.), federal law or any regulation
39 promulgated thereunder.

40 D. Either the Director or a majority of the Board members, acting independently, may request a
41 meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C
42 in order to review such decision and determine by a majority vote of the Board whether or not to grant a
43 public hearing or Board consideration, or to delegate the permit to the Director for his decision.

44 For purposes of this subsection, if a Board meeting is held via electronic communication, ~~the~~
45 ~~Board shall have at least one forum open to the public and individual Board members may participate~~
46 ~~from any location regardless of whether it is open to the public~~ the meeting shall be held in compliance
47 with the provisions § 2.2-3708, except that a quorum of the Board is not required to be physically
48 assembled at one primary or central meeting location. Discussions of the Board held via such electronic
49 communication means shall be specifically limited to those matters identified in this subsection, and no
50 other matter of public business shall be discussed or transacted by the Board.

51 E. The Director shall, forthwith, notify by mail at his last known address (i) each requester and
52 (ii) the applicant or permittee of the decision to grant or deny a public hearing or Board consideration.

53 F. In addition to subsections C, D, and E, the Director may, in his discretion, convene a public
54 hearing on a permit action or submit a permit action to the Board for its consideration.

55 G. If a determination is made to hold a public hearing, the Director shall schedule the hearing at
56 a time between 45 and 75 days after mailing of the notice required by subsection E.

57 H. The Director shall cause, or require the applicant to publish, notice of a public hearing to be
58 published once, in a newspaper of general circulation in the city or county where the facility or operation
59 that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

60 I. The Director may, on his own motion or at the request of the applicant or permittee, for good
61 cause shown, reschedule the date of the public hearing. In the event the Director reschedules the date for
62 the public hearing after notice has been published, he shall, or require the applicant to, provide
63 reasonable notice of the new date of the public hearing. Such notice shall be published once in the same
64 newspaper where the original notice was published.

65 J. Public hearings held pursuant to these procedures may be conducted by ~~the Board at a regular~~
66 ~~or special meeting of the Board and shall be presided over by a member of the Board. Public hearings~~
67 ~~may be held before less than a quorum of the Board~~ (i) the Board at a regular or special meeting of the
68 Board or (ii) one or more members of the Board. A member of the Board shall preside over the public
69 hearing.

70 K. The presiding Board member shall have the authority to maintain order, preserve the
71 impartiality of the decision process, and conclude the hearing process expeditiously. The presiding
72 Board member, in order to carry out his responsibilities under this subsection, is authorized to exercise
73 the following powers, including but not limited to:

74 1. Prescribing the methods and procedures to be used in the presentation of factual data,
75 arguments, and proof orally and in writing including the imposition of reasonable limitations on the time
76 permitted for oral testimony;

77 2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive
78 presentation of them;

79 3. Ruling on procedural matters; and

80 4. Acting as custodian of the record of the public hearing causing all notices and written
81 submittals to be entered in it.

82 L. The public comment period will remain open for 15 days after the close of the public hearing
83 if required by § 10.1-1307.01.

84 M. When the public hearing is conducted by less than a quorum of the Board, the Department
85 shall, promptly after the close of the public hearing comment period, make a report to the Board.

86 N. After the close of the public hearing comment period, the Board shall, at a regular or special
87 meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the
88 public comment period or from a later date, as agreed to by the permittee or applicant and the Board or
89 the Director. The Board shall not take any action on a permit where a public hearing was convened
90 solely to satisfy the requirements of state or federal law or regulation unless the permit was provided to
91 the Board for its consideration pursuant to the provisions of this section.

92 O. When the public hearing was conducted by less than a quorum of the Board, persons who
93 commented during the public comment period shall be afforded an opportunity at the Board meeting
94 when final action is scheduled to respond to any summaries of the public comments prepared by the
95 Department for the Board's consideration subject to such reasonable limitations on the time permitted
96 for oral testimony or presentation of repetitive material as are determined by the Board.

97 P. In making its decision, the Board shall consider (i) the verbal and written comments received
98 during the public comment period made part of the record, (ii) any explanation of comments previously
99 received during the public comment period made at the Board meeting, (iii) the comments and
100 recommendation of the Department, and (iv) the agency files. When the decision of the Board is to
101 adopt the recommendation of the Department, the Board shall provide in writing a clear and concise
102 statement of the legal basis and justification for the decision reached. When the decision of the Board
103 varies from the recommendation of the Department, the Board shall, in consultation with legal counsel,

104 provide a clear and concise statement explaining the reason for the variation and how the Board's
105 decision is in compliance with applicable laws and regulations. The written statement shall be provided
106 contemporaneously with the decision of the Board. Copies of the decision, certified by the Director,
107 shall be mailed by certified mail to the permittee or applicant.

108 § 62.1-44.15:02. Permits; procedures for public hearings and permits before the Board.

109 A. During the public comment period on a permit action, interested persons may request a public
110 hearing to contest such action or the terms and conditions thereof. Where public hearings are mandatory
111 under state or federal law or regulation, interested persons may request, during the public comment
112 period on the permit action, that the Board consider the permit action pursuant to the requirements of
113 this section.

114 B. Requests for a public hearing or Board consideration shall contain the following information:

- 115 1. The name, mailing address, and telephone number of the requester;
- 116 2. The names and addresses of all persons for whom the requester is acting as a representative
117 (for the purposes of this requirement, an unincorporated association is a person);
- 118 3. The reason why a public hearing or Board consideration is requested;
- 119 4. A brief, informal statement setting forth the factual nature and the extent of the interest of the
120 requester or of the persons for whom the requester is acting as representative in the application or
121 tentative determination, including an explanation of how and to what extent such interest would be
122 directly and adversely affected by the issuance, denial, modification, or revocation of the permit in
123 question; and
- 124 5. Where possible, specific references to the terms and conditions of the permit in question,
125 together with suggested revisions and alterations of those terms and conditions that the requester
126 considers are needed to conform the permit to the intent and provisions of the State Water Control Law
127 (§ 62.1-44.2 et seq.).

128 C. Upon completion of the public comment period on a permit action, the Director shall review
129 all timely requests for public hearing or Board consideration filed during the public comment period on
130 the permit action and within 30 calendar days following the expiration of the time period for the

131 submission of requests shall grant a public hearing or Board consideration after the public hearing
132 required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if
133 the Director finds the following:

134 1. That there is a significant public interest in the issuance, denial, modification, or revocation of
135 the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public
136 hearing or Board consideration;

137 2. That the requesters raise substantial, disputed issues relevant to the issuance, denial,
138 modification, or revocation of the permit in question; and

139 3. That the action requested is not on its face inconsistent with, or in violation of, the State Water
140 Control Law (§ 62.1-44.2 et seq.), federal law or any regulation promulgated thereunder.

141 D. Either the Director or a majority of the Board members, acting independently, may request a
142 meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C
143 in order to review such decision and determine by a majority vote of the Board whether or not to grant a
144 public hearing or Board consideration, or to delegate the permit to the Director for his decision.

145 For purposes of this subsection, if a Board meeting is held via electronic communication, ~~the~~
146 ~~Board shall have at least one forum open to the public and individual Board members may participate~~
147 ~~from any location regardless of whether it is open to the public~~ the meeting shall be held in compliance
148 with the provisions § 2.2-3708, except that a quorum of the Board is not required to be physically
149 assembled at one primary or central meeting location. Discussions of the Board held via such electronic
150 communication means shall be specifically limited to those matters identified in this subsection, and no
151 other matter of public business shall be discussed or transacted by the Board.

152 E. The Director shall, forthwith, notify by mail at his last known address (i) each requester and
153 (ii) the applicant or permittee of the decision to grant or deny a public hearing or Board consideration.

154 F. In addition to subsections C, D, and E, the Director may, in his discretion, convene a public
155 hearing on a permit action or submit a permit action to the Board for its consideration.

156 G. If a determination is made to hold a public hearing, the Director shall schedule the hearing at
157 a time between 45 and 75 days after mailing of the notice required by subsection E.

158 H. The Director shall cause, or require the applicant to publish, notice of a public hearing to be
159 published once, in a newspaper of general circulation in the city or county where the facility or operation
160 that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

161 I. The Director may, on his own motion or at the request of the applicant or permittee, for good
162 cause shown, reschedule the date of the public hearing. In the event the Director reschedules the date for
163 the public hearing after notice has been published, he shall, or require the applicant to, provide
164 reasonable notice of the new date of the public hearing. Such notice shall be published once in the same
165 newspaper where the original notice was published.

166 J. Public hearings held pursuant to these procedures may be conducted by ~~the Board at a regular~~
167 ~~or special meeting of the Board and shall be presided over by a member of the Board. Public hearings~~
168 ~~may be held before less than a quorum of the Board.~~ (i) the Board at a regular or special meeting of the
169 Board or (ii) one or more members of the Board. A member of the Board shall preside over the public
170 hearing.

171 K. The presiding Board member shall have the authority to maintain order, preserve the
172 impartiality of the decision process, and conclude the hearing process expeditiously. The presiding
173 Board member, in order to carry out his responsibilities under this subsection, is authorized to exercise
174 the following powers, including but not limited to:

175 1. Prescribing the methods and procedures to be used in the presentation of factual data,
176 arguments, and proof orally and in writing including the imposition of reasonable limitations on the time
177 permitted for oral testimony;

178 2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive
179 presentation of them;

180 3. Ruling on procedural matters; and

181 4. Acting as custodian of the record of the public hearing causing all notices and written
182 submittals to be entered in it.

183 L. The public comment period will remain open for 15 days after the close of the public hearing
184 if required by § 62.1-44.15:01.

185 M. When the public hearing is conducted by less than a quorum of the Board, the Department
186 shall, promptly after the close of the public hearing comment period, make a report to the Board.

187 N. After the close of the public hearing comment period, the Board shall, at a regular or special
188 meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the
189 public comment period or from a later date, as agreed to by the permittee or applicant and the Board or
190 the Director. The Board shall not take any action on a permit where a public hearing was convened
191 solely to satisfy the requirements of state or federal law or regulation unless the permit was provided to
192 the Board for its consideration pursuant to the provisions of this section.

193 O. When the public hearing was conducted by less than a quorum of the Board, persons who
194 commented during the public comment period shall be afforded an opportunity at the Board meeting
195 when final action is scheduled to respond to any summaries of the public comments prepared by the
196 Department for the Board's consideration subject to such reasonable limitations on the time permitted
197 for oral testimony or presentation of repetitive material as are determined by the Board.

198 P. In making its decision, the Board shall consider (i) the verbal and written comments received
199 during the public comment period made part of the record, (ii) any explanation of comments previously
200 received during the public comment period made at the Board meeting, (iii) the comments and
201 recommendation of the Department, and (iv) the agency files. When the decision of the Board is to
202 adopt the recommendation of the Department, the Board shall provide in writing a clear and concise
203 statement of the legal basis and justification for the decision reached. When the decision of the Board
204 varies from the recommendation of the Department, the Board shall, in consultation with legal counsel,
205 provide a clear and concise statement explaining the reason for the variation and how the Board's
206 decision is in compliance with applicable laws and regulations. The written statement shall be provided
207 contemporaneously with the decision of the Board. Copies of the decision, certified by the Director,
208 shall be mailed by certified mail to the permittee or applicant.

209 #